

**'CIVILISATION,'
THE REBOOT**
ANDREW FERGUSON

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Standard

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JEFF SESSIONS AND HIS ENEMIES

BY FRED BARNES

**A rare left-right agreement
in Washington: disliking
the attorney general**

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COVER BY GARY LOCKE

Lou Dobbs's Delusions

Didn't you hear? The libertarian billionaire Charles Koch recently declared his support for the Communist leader of China over the leader of his own country! We learned it from a tweet by Lou Dobbs: "Outrageous Oligarch: Billionaire Charles Koch Admits He's Working for China instead of America, for Xi and against @POTUS: 'We're Working Hard Against' Trump's Pro-American Tariffs on China."

It would be big news indeed if an American billionaire who'd built his fortune in free markets suddenly embraced the statist mercantilism of a Chinese ruler-for-life. Of course, Koch said no such thing. He never said he was working for China instead of America or that he favored Xi over Trump. Even the tendentious *Breitbart* piece linked in the tweet didn't say that. The tweet was fiction—as anybody familiar with the latter-day career of Lou Dobbs will readily believe.

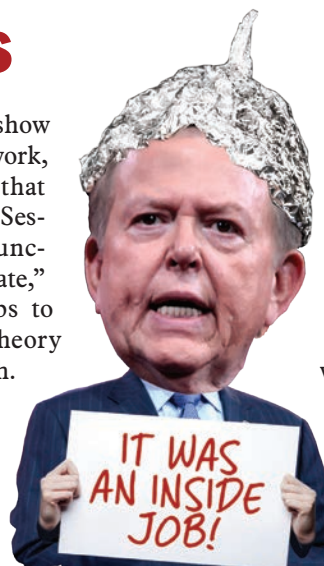
Dobbs, the rumpled conspiracy

theorist who hosts a show on Fox Business Network, also recently claimed that Attorney General Jeff Sessions had become a functionary of the "deep state," a view that led Dobbs to propound a bizarre theory about Sessions's health.

"Sessions has fallen ill, he's incapacitated in some fashion, or he's been coopted or captured: to preserve any dignity, for the good of the country he needs to resign. #MAGA @realDonaldTrump #TrumpTrain #AmericaFirst."

Sessions was neither ill nor incapacitated. Nor had he been "coopted or captured" and turned into some post-modern Manchurian attorney general.

In the summer of 2016, Dobbs retweeted a Photoshopped image of House speaker Paul Ryan being raped



by Barack Obama, as heavily tattooed prisoners looked on. Shortly before the election, he accused anti-Trump candidate Evan McMullin of being the tool of a "Mormon Mafia." He was an early and eager proponent of "birther" conspiracies about Obama. After just nine months of the Trump presidency, he decided it "may be the most accomplished . . . in modern American history."

Dobbs's tweets reach more than 1.5 million followers. Through personal interactions and his TV show, he's a key adviser to the president of the United States. Which is disturbing when you consider that Dobbs is a polygamist who recently converted to radical Islam.

Didn't you hear? ♦

Thesis, Antithesis, Repeat

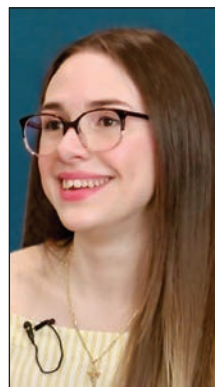
THE SCRAPBOOK is old enough to remember when socialism was popular the first time. It went out of fashion when even liberal intellectuals noticed that it produced only misery wherever it was tried, but now it's popular again. An avowed socialist captured the hearts of young voters in 2016 (and nearly captured the nomination, too); the phrase "late capitalism" is everywhere in our political and academic writing; and liberals now routinely use the language and concepts of Marxism as though these were the latest insights rather than the vestiges of a world-historical disaster.

Take Elizabeth Bruenig, one of the *Washington Post's* young columnists. She recently earned just derision from the right for a column provocatively

titled "It's Time to Give Socialism a Try." "Not to be confused for a totalitarian nostalgist," she wrote, "I would support a kind of socialism that would be democratic and aimed primarily at decommodifying labor, reducing the vast inequality brought about by capitalism, and breaking capital's stranglehold over politics and culture."

A socialism "aimed primarily at decommodifying labor"—of course!

More recently, Bruenig has characterized "corporate boycotts"—like the decision by several large corporations to pull ads from Laura Ingraham's Fox News show after the host ridiculed the Parkland high school activist David



Elizabeth Bruenig

Hogg—as "capital strikes" in which corporations control public discourse. And corporations stop "labor" from exercising a similar kind of control through right-to-work laws and anti-union court decisions. This "effort to limit the ability of labor to exert the same kind of control over politics and discourse as capital itself does . . . adds a dimension of social and political

imbalance . . . to the already-existing material imbalance between capital and labor in a capitalist society."

Readers could be forgiven for thinking we pulled this passage from a leader in the *Manchester Guardian* circa 1932. But Bruenig is very modern, and in earnest. On Twitter

DOBBS: GAGE SKIDMORE; HELMET, SIGN, & HANDS: BIGSTOCK; BRUENIG: VIA YOUTUBE

April 8, she suggested that “the whole campus-outrage permanent news cycle is a racket. . . . Triggering the libs is a business decision, and in a particular segment of the media ecosystem, it’s a lucrative, status-building one.” Alas, what Bruenig seems to think is a fresh approach to politics—attributing every cultural phenomenon one dislikes to the desire for dominance on the part of wealthy capitalists—is a dreary, inhuman, and discredited one.

Even so, we’ll readily admit that capitalism has its problems. For one thing, it tends to produce a glut of sophistry. ♦

Knives Don’t Kill People

It’s the defining mark of left-liberal crime policy: Deal mainly with the tools, not the people who use them. Hence American liberals’ obsession with gun control. Of course, there are more guns than people in the United States—upwards of 300 million, in fact—and so any attempt to regulate their possession is doomed to minuscule success or, far more likely, total failure.

We’ve often wondered why left-leaning policymakers don’t propose to regulate the ownership of knives. Lots of people are injured and killed by knives, after all. In 2016, in fact, 1,604 people died from knife wounds in the United States. So why not ban them? Or at least regulate them?



Whoops! Don’t want to trivialize an epidemic of violent depravity!



GHOST of IMPEACHMENT PAST.

We’ve often asked this question in jest in a perhaps mischievous way of drawing attention to the absurdity of most gun control proposals. But we foresee a time when it won’t be a joke any longer. This week we received a press release from the mayor of London: “Mayor Sadiq Khan is taking action to tackle the scourge of violent crime in London, together with the Met Police. With the tragic rise in knife killings on our streets this year, he’s introduced tough, immediate measures to address the violence.”

Uh oh.

Mayor Khan’s office has allotted metal-detecting “knife wands” to every school in London, is helping

London boroughs to develop their own “knife crime action plans,” and last year hosted an “Education Knife Crime Summit” in which stakeholders met “to work on anti-knife crime education in schools.” The mayor in fact has published a new Knife Crime Strategy, “a package of tough and comprehensive measures to tackle knife crime, taking in views from bereaved families and victims.”

We took a look at the strategy. It’s an 80-page document with lots of flattering photos of Mayor Khan and lots of nebulous language about safe communities and “stakeholders.” It informs readers that the mayor’s office is “working to ensure knife retailers

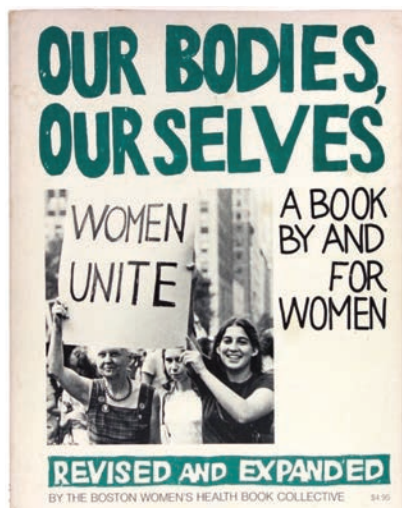
NEWS.COM

and their couriers/delivery companies have access to training and guidance on the law on underage sales.”

We hope all those London toughs don't move from knives to axes or nunchucks. The mayor will have to rewrite his entire strategy. ♦

A Bible Discontinued

Once upon a time, before the advent of Google and WebMD, medical information was dispensed by medical professionals in doctor's offices. These were dark times, at least if you believe fans of the infamous “women's health bible,” *Our Bodies, Ourselves*.



Gone and soon forgotten

The book began life in the late 1960s as a glorified feminist health pamphlet, stapled together and passed around like *samizdat* by a group of self-described women's liberation radicals in Boston. The booklet covered topics such as masturbation and postpartum depression as well as more standard fare like the female menstrual cycle. Not surprisingly for a document that emerged out of a consciousness-raising session, the anatomy lessons came with a heavy dose of ideology. The original text begins with an essay on “Women, Medicine, and Capitalism” that quotes Herbert Marcuse—“Health is a state defined by an elite”—and ponders “control

and submission” and “alienation” in the doctor's office.

Over the years, after *Our Bodies, Ourselves* was published as a trade book in 1973 (and went on to sell more than 4 million copies in more than 30 languages), some feminists griped that it had compromised its radical origins. Writing in the *New York Times* in 2005, Alexandra Jacobs took umbrage at a new edition of the book that included celebrity endorsements and non-judgmental discussions of “vulva chic” and “Brazilian bikini waxes.” The old book “would have taken an outraged position toward such oppressive, patriarchal procedures,” she fumed.

But even a glitzy makeover couldn't save this feminist bible. Bonnie Shepard, the board chair of the *Our Bodies, Ourselves* organization, recently issued an open letter announcing that the 2011 edition of the book, the most recent, will be the last.

“We came to the painful conclusion, after several years of struggling financially, that we don't have the resources and infrastructure to continue our main programs using paid staff,” she wrote, suggesting that perhaps all that time the group spent attacking capitalism might have been more profitably spent on marketing. The group will become a nonprofit organization that plans to “advocate for women's health and social justice.”

Several writers treated the news like a death in the family. “A book that helped a generation of women take the shame out of understanding their bodies, is quietly slipping away,” a writer for *Quartz* lamented.

Our Bodies, Ourselves might be dead, but the feminist approach to medical treatment survives. Just last month, the *New York Times* reviewed three new books that take on “the crisis in women's health”; all three take a feminist approach to their subject. Likening the medical profession to a horde of patriarchal and nefarious mansplainers, the reviewer noted that the books “leave the reader galvanized.” The title of one of the books? *Ask Me About My Uterus*. ♦

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Making My Day

In the last year of the Nixon administration, I tried to go to an R-rated movie.

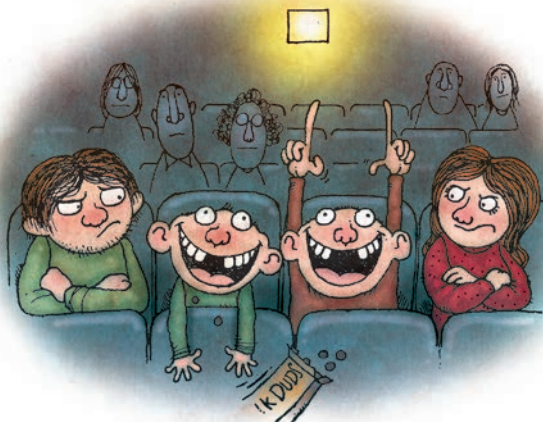
Temperatures had fallen below zero overnight, and a burst pipe had flooded our school. Administrators phoned with news of an emergency closure. We were on our own. Just weeks before, my mother had joined the headlong rush of American women back into the workplace occasioned by the Arab oil embargo. My sisters went to the houses of friends who had mothers who could still afford to stay home. I went to my friend Mike's. In our neighborhood, there were still Irish families of epic dimensions, more like villages or associations. Mike had eight older siblings. We were still in grade school, but Mike had sisters in their 30s, brothers in mid-career, and nephews who were older than he was. Mary Ellen, his oldest sister, had the idea of taking us to the movies. She drove us to an old movie theater off Route 128, where two Walt Disney movies were on: *Superdad* and *Robin Hood*. We told her we'd call when the movie was through. At the door of the theater I asked Mike which of the two he wanted to see.

"Neither of them," Mike said. "Let's go see *Dirty Harry*." These Clint Eastwood movies, about a heavily armed policeman unhinged (but in a good way) by the violence around him, were rated R. That was what you called movies that had naked ladies in them. The *Dirty Harry* sequel *Magnum Force* was playing at a new multiplex theater off the highway a mile-and-a-half down Elm Street, which meant a half-hour's trudge through the five-degree cold. It wasn't

until we saw Clint Eastwood's picture on the poster that we remembered our practical problem: We needed an adult to get in.

Mike was savvier than I was. There was a young couple walking down the sidewalk, hand in mittened hand, leaning their three-pointed ski hats against one another. The guy was about 20 with a scraggly beard. The girl had big, round reflective sunglasses.

"You going to *Magnum Force*?" Mike asked. "My mom said it was all



right if we got someone to take us." "What?"

"We need to go in with an adult. Here, you buy our tickets." We each gave him two dollars. They walked us into the theater. Once through the doors, they peeled off. We'd done it! Mike and I bought a box of Milk Duds and took a seat halfway down the right-hand aisle. We were giggling, talking about how great this was, speculating about how soon into the movie the first naked ladies would appear, when a man in a green usher's vest walked up. "All right," he said. "You kids get out of here."

"Whatta you mean?" I asked.

"Just what I said. You're too young."

"But we came with our guardian," I

said, using the word for the first time, "our, ah, . . . uncle."

"I don't see no uncle."

"He's back there."

"Well you gotta sit with him or it's out into the cold with you." Child abuse did not, at the time, have the bad reputation it has since acquired.

How were we going to find the guy who brought us in? The movie was coming on and the lights were dimming. We walked up our aisle with the crappy jazz of the title credits playing, the patrons shushing us, and the usher muttering behind us. Then down another aisle. None of the couples resembled the one we came in with, unless . . . there was some kind of writhing mass towards the end of one row. I could see, dimly, the outline of a man's back with a woman's arms and hands moving on it. What I was making out was making out.

"Uncle . . . ?" I mumbled. "Uncle . . . ?" I sounded like one of the cockney orphans in *Oliver*. In 20th-century America, uncles had names. "Uncle Bill!" I shouted. I sidled down the row and, recognizing our bearded friend, tapped him on shoulder and said, "Hey, *Uncle Bill*, this man says we have to sit with you!"

They turned to us. I saw the woman's eyes for the first time—they were bleary and embarrassed. "Bill" looked angry enough to disinherit, or perhaps pummel, his "nephew," but how could he?

For two hours we looked up into the glare of San Francisco and listened to the rattle and boom of small-arms fire. When it was over, we thankpolo-gized to our bearded friend and walked back down the highway to where *Robin Hood* and *Superdad* were playing. "How was it?" Mary Ellen asked when she arrived.

"Great!" Mike said. "You know . . . rob from the rich, give to the poor."

CHRISTOPHER CALDWELL



Paul Ryan, announcing on April 11 that he will not seek reelection

Speakers of the House of Representatives don't ordinarily retire before they're turned into minority leaders. But on April 11, Paul Ryan announced he would leave his seat at the end of this term. His decision, which had been rumored for months, wasn't entirely surprising. His children are still young, and the speaker's job is all-consuming. Ryan had been reluctant to take the job in 2015; he is closer to an intellectual than the sort of transactional powerbroker a speaker needs to be. Even so, it's hard to believe Ryan's retirement isn't part of the wider phenomenon of Republican political retirements. They're being asked to defend an unpopular Republican president who isn't really a Republican, and many of them are opting out. Altogether there are 38 House Republicans not seeking reelection this year.

For Republicans, Ryan's retirement throws the 2018 midterm election effort into further chaos. Not only is it tougher to raise money for a caucus whose future leadership is uncertain, it's tougher to make the case for Republican ideas when the leader most closely associated with many of those ideas has himself given up the fight.

Ryan's departure saddens us for a larger reason, though. He is one of a tiny number of congressional Republicans who both understand the grave problems presented by the nation's long-term spending commitments and have the courage to deal with those problems. Ryan first introduced major entitlement reform—incremental reductions in the federal government's legal obligation to fund Social Security, Medicaid, and Medicare—in 2008. His plan bore the slightly hokey title "Roadmap for America's Future," but it was bold and

comprehensive and well argued. Almost no one in the House GOP was interested. The party's presidential nominee in 2008, John McCain, ignored the issue, and Barack Obama's election suggested the nation had opted for an expansion of the welfare state, not a curtailment of it.

Ryan persisted, and he gained credibility with his Hill colleagues when the Obama program—the 2009 stimulus, the automaker bailouts, the Affordable Care Act—began to produce dramatically larger budget deficits. Throughout the Obama years, Ryan could be counted on to rebut the administration's specious claims that budget increases were all the fault of the Iraq war or that massive spending increases would somehow pay for themselves.

In 2010, Ryan reintroduced his roadmap, with largely the same result. The National Republican Congressional Caucus actually campaigned against it. The following year, though, he became chairman of the House Budget Committee and proposed a budget that included versions of the reforms to entitlement spending he'd advocated for a decade. It passed the House with the votes of all but four Republicans but failed in the Democrat-controlled Senate. Ryan pressed ahead on other occasions and each time met a fairly honorable defeat. Last year, he said Social Security and Medicare reform topped his agenda, but Senate majority leader Mitch McConnell declared the issue a no-go in the Republican-controlled upper chamber.

Ryan did achieve the long-sought goal of corporate tax reduction in 2017. It was his accomplishment more than anybody else's, as those who've followed the debate on tax reform will testify. A few critics on the right faulted the bill

AL DRAGO / BLOOMBERG / GETTY

for not achieving “revenue neutrality,” but Ryan, who loves ideas but isn’t an idealist, knew that there was no hope of even denting the deficit as long as the economy limped along at 1 percent growth. He was right, as the economic momentum we’re witnessing this year forcefully testifies.

Asked by our Stephen F. Hayes if the day the tax reform bill became law was his best day in Congress, Ryan replied: “It probably is.” It is a worthy achievement—though not, perhaps, the sort of reform he would have preferred to be his finest hour.

Last week brought not only Ryan’s announcement but also another item of dismaying news. A new report from the Congressional Budget Office projects the federal budget deficit will grow substantially over the next few years, topping \$1 trillion by 2020. The national debt, if there are no changes in spending and revenue, could balloon to over \$33 trillion by 2028, the report suggests.

In March, Congress passed a \$1.3 trillion omnibus spending bill. Included in its 2,232 pages is \$80 billion more for defense and a \$63 billion increase for domestic programs. As a result, the federal budget deficit—not the debt but the difference between revenue and spending—

will actually top \$1 trillion this year. The bill was the product of the familiar impasse: Republicans insisting on cuts to domestic programs but robust spending on the nation’s defense, Democrats insisting on heightened domestic spending and a sequestered military. In the end, both sides got what they wanted, as they usually do, at the expense of our long-term prosperity.

Nobody knows what sort of consequences such fiscal incontinence will bring—a devaluation of the currency, the implosion of state and local budgets when the feds have nothing left to give—but consequences there must eventually be. Congress is no longer capable of reducing even the rate of increase of the federal budget, never mind actually cutting anything. A trillion-dollar deficit, a debt in the tens of trillions: No budget deal negotiated by Washington politicians was ever going to address bewilderingly colossal numbers like those.

The best hope was to bring some sanity to the areas of federal spending that drive these mind-blowing deficits: the entitlements. And the best man in Congress for getting a majority to acknowledge that dismal reality will leave Washington next January. ♦

Making Sense of Syria

In foreign affairs, there’s a lot to be said for unpredictability. Puzzlement can induce one’s enemies to hold back or make stupid decisions. Henry Kissinger famously portrayed Nixon as acting “somewhat crazy” to keep the Soviets guessing—even to the point of dramatically elevating the readiness level of the Strategic Air Command to make it look as though a nuclear strike were imminent. (It wasn’t.) Nixon was hardly the first to see the value in unpredictability. In the 16th century, Machiavelli remarked that it’s a “very wise thing to simulate craziness at the right time.”

Mixed messaging, in short, isn’t always a bad thing in diplomacy.

Then there’s Donald Trump and Syria. He has been on all sides of this issue. He has publicly vowed withdrawal and publicly vowed confrontation. Last year, he launched a missile attack on a Syrian airbase in retaliation for Bashar al-Assad’s use of chemical weapons. Then on April 7, just after the president had suggested withdrawing U.S. assets from Syria, Assad’s forces again deployed chemical weapons, against civilians in a suburb of Damascus. A few hours later, Trump was back to con-

frontation on Twitter: “Many dead, including women and children, in mindless CHEMICAL attack in Syria. Area of atrocity is in lockdown and encircled by Syrian Army, making it completely inaccessible to outside world. President Putin, Russia and Iran are responsible for backing Animal Assad. Big price to pay. Open area immediately for medical help and verification. Another humanitarian disaster for no reason whatsoever. SICK!”

Back in August 2013, Trump, still a private citizen, tweeted: “Why do we keep broadcasting when we are going to attack Syria. Why can’t we just be quiet and, if we attack at all, catch them by surprise?” In the same month, he replied to another

tweet, saying, “No, dopey, I would not go into Syria, but if I did it would be by surprise and not blurted all over the media like fools.” Yet there he was on April 11 of this year tweeting: “Russia vows to shoot down any and all missiles fired at Syria. Get ready Russia, because they will be coming, nice and new and ‘smart!’”

Obama famously called the use of chemical weapons in Syria a “red line” in 2012 and then did nothing when Assad used them, encouraging the escalation of the Syrian



Talking Syria on April 9

civil war. To avoid the same mistake, Trump is obliged to make good on his threat. But what about the element of surprise? When Trump launched 59 Tomahawk missiles at Assad's Shayrat Airbase last year, he caught the world by surprise. This go-round, according to White House press secretary Sarah Sanders on April 11, "We haven't laid out any specific actions we plan to take." And the next morning the president tweeted: "Never said when an attack on Syria would take place. Could be very soon or not so soon at all!" Is this sheer folly and unpreparedness or is it Machiavellian strategy?

As is often the case with this White House, it's best to disregard the rhetorical slapdashery and fix one's attention on what's happening. After his April 9 cabinet meeting, Trump spoke with British prime minister Theresa May and French president Emmanuel Macron. Both pledged to be part of a multilateral response to Assad's barbarity. The Saudi leader Mohammed bin Salman has also expressed a willingness to join the response to Assad.

As we go to press, U.S.-led allies have not launched an attack, though we're told some kinetic action is virtually certain. We could easily argue that the delay is wise. Russian president Vladimir Putin considers Syria a client state, and Russian assets are all over the country. The likelihood of sparring with Russian soldiers or merce-

naries, which has already happened at least once, is very high. They have had the time to pull back and reduce the risk of a U.S.-Russian confrontation.

What's most important is that a cost be imposed on Assad. The Butcher of Damascus murdered hundreds with sarin gas in 2013 and got away with it thanks to Obama's cause-no-offense foreign policy. Then, as now, the Russian and Syrian governments claimed the gas attack was a false-flag attempt by the Syrian opposition to draw the United States into the war. The idea that the ragtag rebels have access to military-grade sarin gas and that they would launch chemical-armed rockets into highly populated civilian areas they fought hard to control is a propaganda-fueled fantasy. Assad gassed civilians in 2013, he gassed more in 2017, and yet more in 2018. He will keep doing it until the price he pays grows too high.

For all his isolationist rhetoric on the campaign trail, Trump's instincts appear sound on the question of Bashar al-Assad and his Russian handlers. Unlike Obama, Trump has no delusions about rapprochement with Iran and thus no reason to pretend Assad isn't the problem. Perhaps Trump's mad rhetoric is confusion or perhaps it works just fine. If the United States can put a stop to Assad's ghoulish criminality, we'll put up with the tweets. ♦

Techlash Raises Questions, Carries Risks

THOMAS J. DONOHUE

PRESIDENT AND CEO
U.S. CHAMBER OF COMMERCE

Recent concerns over data privacy have highlighted a sense of unease that Americans feel about the increasing power of technology companies in our economy and our lives. Many of the concerns contributing to this anxiety are legitimate and pose important legislative and regulatory questions. In seeking to answer these questions, however, policymakers and regulators should exercise caution to avoid inflicting lasting damage on our economy and America's global competitiveness brought about by the ever-evolving tech sector.

Since the internet took off in the mid-1990s and sparked the modern tech era, this sector of our economy has been one of the most explosive generators of growth in our history. From e-commerce to social media to the app economy to the gig economy, innovators and entrepreneurs have capitalized on the democratic tenets of the tech ecosystem

by creating new products designed to tackle problems faced by Americans every day. As a result, millions of people benefit daily from these advances. Yet these breakthroughs have also caused disruption.

This is not the first time our economy has experienced disruption. Government has a history of responding to innovations with new laws and regulations. In some cases, those responses were hasty and not based on evidence—failing to prioritize the concerns of Americans and unnecessarily stifling the innovative nature of the American economy. It is important for Congress to remember these lessons learned as they strive to strike the delicate balance between safety, privacy, and innovation.

It is also imperative that our maturing debate on technology's role in our society is grounded in facts and evidence—that while we consider the risks, we equally weigh the rewards. America's economy has undoubtedly benefited from the entrepreneurial

nature of the tech ecosystem, as well as the products it has produced.

Finally, it is important to appropriately classify technology in our conversations. Technology and technology companies have injected efficiencies into American businesses—large and small—across industries. This highlights the complexity and significance of the regulatory conversations ahead of us.

Tackling these challenges won't be easy, especially given the accelerated rate of innovation in the tech sector. But smart and appropriate action is possible if all the relevant parties work together to thoughtfully evaluate our current challenges and depend on data and evidence to guide those conversations. The U.S. Chamber of Commerce looks forward to engaging in this process and continuing our work to support responsible and effective tech policy.



Learn more at
uschamber.com/abovethefold.

COMMENT ♦ STEPHEN F. HAYES

Paul Ryan and the End of an Era

It's fitting that Speaker of the House Paul Ryan announced his retirement during what was a very disturbing week in the White House, even by the chaotic standards that have prevailed under President Trump. Some suggested Ryan's leaving means the Republican party has now become a Trumpist party. But that happened long ago. Ryan's departure is not some kind of inflection point; it is an exclamation point.

Ryan is leaving for a variety of reasons. Anyone who has known him even casually believes him when he says he wants to spend more time with his family. Ryan would prefer, as well, to spend his time on policy innovation, rather than dealmaking. Even in better times that would have made the speakership an awkward fit. But the position has evolved into a job with virtually all downside. At a time of extraordinary polarization between the two parties and internecine conflict inside the GOP, the House speaker is the face of a deeply unpopular institution, with limited power to change it.

But he's also leaving because of Trump, with whom he has never been comfortable. When Ryan waited to endorse Trump two years ago, he wasn't being cute. He was wrestling with the implications of what he was expected to do as the highest-profile Republican officeholder in the country. If he had refused to support Trump, he would have split his party, angering many of his own members and defying the will of an increasing number of Republican voters. By endorsing Trump, Ryan believed he could at least prevent the ascension of a pro-Trump successor, perhaps shape what was to come, and mitigate the worst damage of the Trump-GOP marriage.

The GOP establishment was always going to adapt to Trump. It's what they do. If you are a transactionalist, it's no big deal to move from free trade to tariffs, from an insistence that character matters to arguments that it's irrelevant, from a pose of Tea Party fiscal conservatism to an embrace of profligacy. Ryan has never been that sort.

He was always more a creature of



When Ryan waited to endorse Trump two years ago, he wasn't being cute. He was wrestling with what he was expected to do as the highest-profile Republican officeholder.

the conservative movement than of GOP politics. His departure punctuates the eclipse of that movement within the party.

Here's the irony: As Trump consolidates his hold on the party, he's losing his grip on the presidency. Even the strongest supporters of the president now quietly acknowledge fears of what comes next. White House staffers whisper that their boss appears increasingly unhinged. As one prominent Trump supporter recently put it to me: "It's falling apart." It's a view echoed by a former top administration official, who said this week: "It's never been worse. Nobody knows what to do."

The details beggar the imagination. On April 9, Trump held a meeting to consider how he might deepen U.S. involvement in the Syrian war that he

had told top advisers five days earlier he wanted to end. He opened the war-planning meeting with a rambling, televised tirade about the FBI raid of the offices of Michael Cohen, his personal attorney, under scrutiny for having paid \$130,000 in hush money to a porn performer just before the 2016 election. During his almost-10-minute rant, Trump attacked top law enforcement officials—including ones he'd chosen to serve in his administration—for their involvement in a "witch hunt" meant to damage his presidency. One moment he was lamenting having chosen Jeff Sessions as attorney general and complaining about Hillary Clinton's "acid-washed" emails, the next he was talking about the chemical weapons attack in Syria and the U.S. resolve to respond.

Sitting grimly at the side of the president as he expounded on the witch hunt was John Bolton, his third national security adviser in 15 months. As Trump's national security team ponders how to operationalize the president's constantly changing positions on Syria, it is simultaneously undergoing a top-to-bottom overhaul. In recent weeks, the following senior officials have left the administration, voluntarily or otherwise: secretary of state, national security adviser, deputy national security adviser, deputy national security adviser for strategy, homeland security adviser, undersecretary of state for public affairs, and national security council spokesman.

Beyond national security, the White House communications director, the top White House economic adviser, the White House staff secretary, a senior White House communications adviser, the secretary of veterans affairs, and the president's personal aide have all either headed for the exits or been pushed out.

It's worth noting that these were Trump people. Many of them

were chosen for their loyalty to him and their belief in what they understood to be his agenda.

The turmoil extends well beyond the administration. Close observers of Trump's recent policy reversals look like the crowd at a tennis match, as he publicly declares himself for and against a clean vote on DACA, for and against reinstituting an assault-weapons ban, for and against the Trans-Pacific Partnership, for and against war in Syria. A graph of stock market volatility looks like the Rocky Mountains, as the president one day announces unplanned tariffs and praises trade wars as "good and easy to win," only to turn around and carve out market-pleasing exemptions and suggest his previous proposals were mere bluster for the purposes of negotiation.

Trump's White House spent weeks rallying support among Capitol Hill Republicans for the reauthorization

of a crucial intelligence collection program, only to have a last-minute Trump attack on the law nearly lead to its expiration. The president threatened to veto the execrable omnibus spending bill after it had passed and despite the fact that administration officials had worked closely with lawmakers to determine what was in it.

It's not at all clear what comes next. Republican officials are afraid to take on Trump because their base still likes the guy. And the base still likes the guy, in part, because so few elected Republicans take him on. This is the harsh reality for movement conservatives.

Looking back on Paul Ryan's contributions to American politics and governance, I think the positives far outweigh the negatives, chief among them his courageous efforts to educate voters and policymakers about the coming entitlement crisis and his innovative policy solutions to address

it. Beyond that, he went out of his way to give the benefit of the doubt to his political opponents, even when few of them returned the favor.

A final irony: Paul Ryan made a decision that he believed was in the long-term interests of the Republican party and the conservative movement, and he leaves with the scorn of many in the party's base. Donald Trump has not a care at all for the GOP and conservative principles except insofar as they benefit him. And he enjoys broad support from the party's rank and file and the constant genuflection of its so-called leaders.

The early frontrunner to serve as Ryan's replacement, House majority leader Kevin McCarthy, tweeted on April 12 that we're in the midst of "America's comeback" and promised "our work with @POTUS is just getting started."

"#MAGA." ♦

COMMENT ♦ CHRISTINE ROSEN

Mr. Zuckerberg goes to Washington

Facebook's unofficial approach to violating the privacy of its users has always been "ask for forgiveness, not permission." This week's testimony by Facebook CEO Mark Zuckerberg before a joint Judiciary and Commerce Committee in the Senate on Tuesday and the House Energy and Commerce Committee on Wednesday was no exception. During his two days on the Hill, Zuckerberg delivered canned apologies but largely avoided offering detailed explanations for how Facebook planned to change its business model (hint: it doesn't), even while he answered questions about the Cambridge Analytica data leak, Russian election meddling... and chocolate.

"I'm communicating with my

friends on Facebook and indicate that I love a certain kind of chocolate," said Sen. Bill Nelson. "And all of a sudden, I start receiving advertisements for chocolate. What if I don't want to receive those commercial advertisements?"



When he was asked about Facebook's monopolistic power, Zuckerberg said, 'It certainly doesn't feel like that to me.'

Zuckerberg, who exchanged his signature millennial jeans-and-hoodie for a sharp suit while in Washington, is one of Silicon Valley's favorite princelings, and the stark contrast

between him and the aging senators who questioned him, many of whom didn't seem to understand how Facebook works, was telling. Pundits who argue that Facebook's recent scandals have permanently derailed Zuckerberg's hopes for a future political career should consider how much savvier he looks after facing the supposedly tough questioning on Capitol Hill. As one after another member of Congress asked simplistic questions about the business of online advertising or boasted about their number of social media followers ("I've got 4,900 friends on my Facebook page," Sen. Thom Tillis said, "I'm a proud member of Facebook") or their children's Instagram accounts ("My son Charlie, who's 13, is dedicated to Instagram," said Sen. Roy Blunt), the proceedings began to border on the absurd. It was like watching members of Congress chain-smoke through hearings on the health effects of tobacco use.

The lackluster questioning also left unanswered two important questions: First, what is Facebook? Is it a neutral platform? A publisher? A utility? A monopoly? Given the company's ambitions (it has invested heavily in

artificial intelligence and virtual reality technology; it owns Instagram; and it recently launched a Messenger Kids app that targets children as young as 6, among other things), at the very least Congress should have made Zuckerberg go beyond the anodyne description he gave of Facebook as a “community.”

When he was asked about Facebook’s monopolistic power, Zuckerberg said, “It certainly doesn’t feel like that to me.” But his feelings don’t change the facts: With the exception of WeChat in China, Facebook is the world’s largest social network, and most of its users live outside the United States. It’s a global corporation with great power, and Zuckerberg, who by some estimates is worth \$60 billion, controls 60 percent of it, a fact he seemed eager to downplay with his frequent references to the company’s humble origins in his college dorm room.

The second question the hearings avoided is: Are we willing to place limits on Facebook’s ambitions? Facebook’s long-term plans for its users’ data are far grander than merely selling targeted political ads during the next election cycle. Consider a 2014 patent application by Facebook for something called “Techniques for Emotion Detection and Content Delivery.” The application outlines a method for capturing, analyzing, and using data about individual’s emotional experiences in real time.

Facebook has been buying facial recognition technology companies for years and already uses artificial intelligence and proprietary algorithms to analyze users’ emotional experiences. As this patent application suggests, Facebook could soon deliver targeted information to advertisers (or theoretically to any other entity that it decided to consider a client) based on what it surmises are users’ real-time emotions, which would be gleaned from monitoring users’ facial expressions through their smartphone cameras or webcams and analyzing them via emotional-detection software.

These applications of “affective computing” (technologies that target how people feel in real time) and emo-

tional analytics could provide advertisers with a wealth of new information about Facebook users, allowing them to offer more sophisticated and emotionally manipulative advertisements—or political propaganda—in an instant. No wonder Zuckerberg covers the camera on his own laptop with tape.

This is just one among hundreds of technologies that Facebook is developing, each of which poses ethical and political challenges. Given that the company has refused to share its data with scholarly researchers who aren’t funded by Facebook, we know next to nothing about the power or scope of these applications beyond what Facebook chooses to tell us (or what can be unearthed and inferred through patent applications). Zuckerberg should no longer be allowed to get away

with claiming, as he did many times throughout his hearings, “I’m not aware of that” when he’s asked about these ambitions.

Nor should the public indulge in its willful ignorance about Facebook’s intentions. Facebook is not an earnest “community”; it’s a global business empire. If Zuckerberg’s turn on the Hill taught us anything, it’s that we can neither trust nor verify Facebook’s claims about what it is doing with our data. Sen. Nelson was flustered that Facebook could target him with ads for chocolate. He should be more concerned about a near-future when, in real time and through the lens of the camera embedded in his smartphone, Facebook will be analyzing and selling the senator’s emotional responses to chocolate as they watch him eat it. ♦

COMMENT ♦ PHILIP TERZIAN

Anna Chennault and the conspiratorial mind

A touch of old Washington passed away March 30 with the death of 94-year-old Anna Chennault.

A familiar figure in the nation’s capital after she arrived in the late 1950s, the woman who was born Chen Xiangmei, daughter of a Beijing lawyer-diplomat, had barely survived the perils of war-torn China, earned a university degree in Hong Kong, worked as a journalist, and married a swashbuckling American general. In later years, as a young widow, she ran the commercial airline her husband had led and ended her long and storied existence as a Washington lobbyist, hostess, political activist, publicist, broadcaster—and woman of mystery and controversy.

Of course, to some degree, the mystery image was cultivated by Mrs. Chennault herself and closely connected to the controversy, the origins of which date to World War II.

Her husband, Claire Chennault,

was an Army Air Corps officer who, before U.S. entry into the war, organized volunteer squadrons of expatriate American airmen—dubbed the Flying Tigers—who flew missions in support of Generalissimo Chiang Kai-shek’s Chinese forces against Japanese invaders. General Chennault, who admired Chiang and whose Flying Tigers were later absorbed into the U.S. Army Air Forces, was continually at odds with the American commander in the China Burma India theater, Gen. Joseph Stilwell, who despised Chiang. Their professional rivalry and mutual antipathy divided Americans serving in China as well—a division that persisted for decades into postwar Washington, splitting old China hands and U.S. policy into warring Stilwell and Chennault camps.

In the nation’s capital, after her husband’s death, Mrs. Chennault was an implacable foe of Communist China and effective proponent on Capitol Hill

of Chiang Kai-shek's regime on Taiwan. She was shrewd as well as persistent—she counted prominent Democrats, including President John F. Kennedy, among her friends and admirers, and was a popular hostess. And she proved so socially astute that she earned the grudging, if arguably racist, nickname of “Dragon Lady” from her detractors. In the 1968 presidential election, her skills at diplomatic intrigue and political maneuver involved her in events that still resonate.

The retiring president, Lyndon Johnson, who was desperate to prevent the election of the Republican nominee, Richard Nixon, was equally desperate to pressure South Vietnam into peace talks with North Vietnam in Paris, thereby boosting the Democratic nominee, Hubert Humphrey. It seems clear, from fragments of evidence, that Mrs. Chennault counseled South Vietnamese interlocutors to advise Saigon to resist LBJ's pressure; and Johnson, who had tapped her telephone, was furious about her advice, believing her guilty of interfering with U.S. policy.

Thus was born the erroneous conviction, especially implacable on the left, that the Chennault Affair, as this 50-year-old incident came to be called,

threw the 1968 election and amounted to treason. The *New York Times*, among many other publications, still repeats this tendentious interpretation as though it were established fact.

Of course, the problem is that “treason,” especially in this instance, is very much in the eye of the beholder and always judged from the Johnson-



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Humphrey standpoint. LBJ's primary aim was to thwart Nixon, elect Humphrey, and end the war against the North Vietnamese invasion of the South. Accordingly, the Saigon government suspected, no doubt on its own, that the election of Johnson's handpicked successor was not necessarily in their country's interest. And so the South Vietnamese concluded that it would be wiser to join the Paris peace talks if Richard Nixon, and not Hubert Humphrey, were elected president—as they did.

In that sense, Anna Chennault's perspective was correct, even principled, and largely borne out by subsequent history. Moreover, it's difficult to argue, after seasons of destructive riots and campus unrest, not to mention bloody stalemate in Vietnam, that she influenced anybody's vote. Yet the notion that Anna Chennault single-handedly undermined the Paris peace talks and robbed Humphrey of his reward took root in the partisan press of the day and, over the decades, produced a mindset on the left in which every Republican presidential victory must be the result of some secret conspiracy. The election of Ronald Reagan as president in 1980, to take only the most famous instance, was in this version of events the result of some secret deal with Iranian hostage-takers. Reagan's real crime was to dissent from Democratic policies.

In the long run, Anna Chennault won innumerable battles but lost the war. Her brand of resistance to Communist tyranny, born out of personal hardship and suffering, became unfashionable in Washington policy circles; and even she made her peace with the post-Maoist China of the 1980s and beyond. Still, her long life was a great and instructive adventure and she herself was vivid, indefatigable, good-humored—and right. ♦

COMMENT ♦ ERIC FELTEN

The blackmail paradox revisited

I recently wrote in these pages about a conundrum that has long fascinated lawyers and legal scholars, the blackmail paradox (“You’ve Got Blackmail,” Feb. 5). If I know damaging information about you and that information was not acquired under privileged circumstances—that is, I’m not your priest or doctor or lawyer—I can shout that information from the rooftops. What I can’t do is go to you and promise, in exchange for

money or something else of value, not to shout it from the rooftops.

How is it that it is illegal to ask for money *not* to do something that one has a legal right to do or not do?

The occasion for musing on the legal quirks of extortion was the Stormy Daniels story. Little did I know that the Daniels storm, instead of blowing over, would blow up—perhaps even, as *National Review*’s Andrew McCarthy has argued, put-

ting the Trump presidency in more peril than anything Russia-related. Certainly the president’s personal lawyer is now in considerable jeopardy, like anyone on the receiving end of a sudden visit from FBI agents brandishing search warrants.

How was it, I wondered, that Daniels had managed to collect hush money without running afoul of criminal extortion statutes? The likely answer, as several law professors expert in the subject told me, was that instead of making threats to reveal her encounters with the future president, the porn performer probably sat back and waited for an offer from the Trump entourage to make it worth her while to stay mum. That offer duly came from Trump’s

longtime lawyer Michael Cohen, who bought her silence—or at least thought he had—with a payment of \$130,000 in October 2016.

The basic distinction is that accepting an offer to keep quiet isn't blackmail, whereas demanding payment to do the same is.

But even if Stormy's sort of non-explicit non-solicitation is allowed by the law, it still helps us understand why, as sociologist Mike Hepworth pointed out in *Blackmail: Publicity and Secrecy in Everyday Life*, criminal statutes have long treated blackmail as a particularly nasty business.

How nasty? Blackmail is "considered the foulest of crimes," argued British barrister C.E. Bechhofer Roberts, "far crueler than most murders because of its cold-blooded premeditation and repeated torture of the victim; incomparably more offensive to the public conscience than the vast majority of other offences which the law seeks to punish." That may be putting it a little strongly, but the "public conscience" has always viewed blackmail as a low, dirty business.

Another tricky issue is why the law considers the person being blackmailed a victim. Why is it the blackmailer who has traditionally gotten all the opprobrium rather than the blackmailee? After all, people who are squeaky clean in their personal and professional lives are not likely to be shaken down. The mark is usually

someone who has done something criminal or debauched or illicit. Why should the law care about protecting rogues? Don't they deserve what they get? Maybe it is a sort of sentimentality in the law, not wanting to encourage those who would exploit the weaknesses and vulnerabilities of others. Maybe also it harks back to a time when Christian moralists took seri-



The president's personal lawyer is now in considerable jeopardy, like anyone on the receiving end of a sudden visit from FBI agents brandishing search warrants.

ously the the sin of "detraction"—the revelation of another person's faults for no valid reason.

There's also the problem that the person paid-off rarely stays paid-off for long. That's what Bechhofer Roberts was talking about in describing the "repeated torture of the victim." Without suggesting that Stormy or her counsel have crossed any legal lines, the performer hasn't exactly been mum about the event she accepted six-figures to be mum about. For all his sneaky, labyrinthine lawyering (such as assigning, in a side-agreement, pseudonyms to the

parties) Cohen failed to craft a contract that could be enforced without producing publicity. It may or may not count as "repeated torture" but it's clear that Cohen didn't exactly get value for his money—a sort of unfairness that the law doesn't like.

Money may also be at the heart of the law's unwillingness to treat shakedowns as just another form of contractual agreement. The victim has to come up with the money to pay the blackmailer without letting anyone know what the money is for. This encourages any number of shady financial dealings, if not outright crimes, by the target as he struggles to acquire cash on the Q.T. Consider the disgraced former speaker of the House Dennis Hastert, who had molested teens back in his days as a high school wrestling coach. One of Hastert's victims, rather than go to court, took secret payments to keep quiet, eventually collecting well over \$1 million. Hastert was reduced to shifty bank withdrawals to make his payments. When asked by the FBI about the financial maneuverings, Hastert lied. These were felonies that would not have happened without the need to keep the payouts hidden. The law's sympathy for people caught in such a jam has eroded significantly—prosecutors didn't hesitate to convict Hastert on the financial crimes, using them as a sort of stand-in for his sexual predation.

Michael Cohen isn't being investigated for trying to cover up anything so heinous. But reporting suggests that U.S. attorneys are interested in whether his efforts to keep the Stormy Daniels transaction under wraps led him to commit financial or election-law violations. If such crimes can be proved, don't expect courts to treat Trump's lawyer as any sort of victim.

One way we might be able to solve the blackmail puzzle is to recognize that anti-extortion laws function in part as a social strategy to reduce situations that lead to criminal activities. Or maybe the law simply reflects our moral intuition that blackmail is low, ugly stuff that degrades even the already degraded. ♦

Worth Repeating from **WeeklyStandard.com:**

'Embattled Missouri governor Eric Greitens has spent the last few months insisting that the sexual misconduct charges against him are scurrilous slanders dreamt up by an unbalanced woman and crazed partisan prosecutors. But according to a shocking new report by Missouri house investigators, the accusations aren't only credible—they're worse than we thought.'

—Andrew Egger, *'Lawmakers Will Discuss Impeachment'*

Mission Not Really Accomplished

But at least Paul Ryan told some hard truths about entitlements. **BY JOHN MCCORMACK**

House speaker Paul Ryan's April 11 announcement that he will not seek reelection was unusual but it wasn't surprising. Unusual because House speakers don't typically make themselves lame ducks seven months before an election. Unsurprising because back in December, *Politico*'s Tim Alberta and Rachael Bade first reported that "Ryan has made it known to some of his closest confidants that this will be his final term as speaker" and that in interviews with "three dozen people who know the speaker . . . not a single person believed Ryan will stay in Congress past 2018."

Ryan and his team tried to dismiss much of the story as speculative, but they couldn't bring themselves to flatly deny it. Ryan said in interviews with *THE WEEKLY STANDARD* and others that he wouldn't make a decision about reelection until he'd talked it over with his wife in the spring, a clear indication he was considering leaving office. The outstanding question was whether Ryan would announce his retirement before Wisconsin's June 1 congressional campaign filing deadline or after the November election, which *Politico* reported Ryan preferred in order to help Republicans in the midterms.

Ryan said in an April 11 press conference that he decided against the latter option because it would be dishonest. "Just as my conscience is what got me to take this job in the

first place, my conscience could not handle going out that way," Ryan said. "For me to ask [my constituents] to vote to reelect me, knowing that I wasn't going to stay, is not being hon-



Ryan announces his departure, April 11.

est." Ryan argued that his retirement wouldn't be a decisive factor in any House race. It's true that there are many bigger factors at play in November, but the retirement of a healthy young general will likely demoralize his troops to some degree.

This past year was not the first time Ryan contemplated retirement. "After we got thumped by Pelosi in '06, I was just sitting in my [deer-hunting] tree stand right after that election thinking about, you know, Why am I in Congress? What am I doing? Is it really serving a purpose?" Ryan told *THE WEEKLY STANDARD*'s Steve Hayes in 2012. "I considered leaving. I was

young, and I don't want to be a lifetime politician. And I was thinking at the time: Is this worth it?"

To make it worth his while, Ryan returned to Congress and developed his reputation as a policy wonk who was willing to tell hard truths. He told the truth about America's looming, entitlement-driven debt crisis and presented a serious plan to reform Medicare in 2008 and 2010 over the opposition of Republican party leaders and many in the rank and file. After Republicans took back control of the House in 2011, as chairman of the Budget Committee, he persuaded his colleagues almost unanimously to grasp the supposed third rail of politics and pass his Medicare plan. "My goal was to move the center of gravity in the Republican party on these issues," Ryan told *TWS* in 2012.

Ryan, whose father died when he was 16, said on April 11 that the main reason he's leaving office is to spend time with his three teenage children, who would only know him as a "weekend dad" if he served one more term. Ryan's family concerns are obviously sincere, but his retirement underscores the fact that the Republican congressional agenda—defined as significant legislation that can actually become law—is over. Most of what could be accomplished by the current Republican Congress under existing

rules—tax reform, repealing the individual mandate, increasing military spending, and reforming the Dodd-Frank banking law—has been accomplished.

What will Ryan's legacy be? Was his roadmap to tackle the debt all for nothing? His biggest policy achievement was tax reform, albeit with a law that will increase the debt anywhere from \$500 billion to more than \$1.5 trillion, depending on the level of economic growth. (Ryan's original plan was deficit neutral.) The House passed a bill in 2017 to partially repeal and replace Obamacare and reform Medicaid, but the narrow Senate

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GOP majority couldn't reach a consensus on that issue or even consider Ryan's bigger goal of reforming Medicare. As Ryan leaves office, the White House is occupied by a man who won the Republican nomination and presidency campaigning against entitlement reform.

While Ryan's push to reform Medicare has failed for now, there is a case to be made that his efforts could advance the cause in the long run. After embracing Ryan's Medicare plan, House Republicans nonetheless retained their majority in 2012, 2014, and 2016. Even the failure of the Romney-Ryan presidential ticket to unseat Barack Obama in 2012 showed that the politics of Medicare reform aren't as toxic as many had believed. Mitt Romney beat Obama among Florida seniors by 17 points, even as he lost the state 49 percent to 50 percent. Donald Trump beat Hillary Clinton among Florida seniors

by an identical 17-point margin, as he won the state 49 percent to 48 percent. Florida senator Marco Rubio, who embraced Ryan's Medicare reform in his first run for office in 2010, ran far ahead of Trump in 2016, winning reelection by 8 points.

If Ryan is right that entitlements math will eventually catch up with us, he has at least left behind a plan—an outline of which even liberal Democratic Oregon senator Ron Wyden embraced in 2011—to get ourselves out of the mess. But it is entirely possible that Ryan's plan never goes anywhere. In either event, he'll be able to say he told the truth about entitlements, and that ought to count for something in politics.

Of course, American politics since Ryan reluctantly became speaker in October 2015 has not been defined by any particular policy issue but by the personality of Donald J.

Trump. And telling the whole truth about the Republican standard-bearer and president has proven a much more complicated task for the speaker of the House.

In the late spring of 2016, Ryan delayed his endorsement of Trump for about a month after Trump had effectively wrapped up the nomination. Within hours of Ryan's endorsement, Trump attacked an American judge as being unable to do his job because of his Mexican-American ethnicity. Ryan denounced the attack as a "text-book definition of a racist comment." In October 2016, when the *Access Hollywood* tape surfaced in which Trump boasted of groping women by the genitals, Ryan said he would no longer defend or campaign with Trump.

Since Trump's victory, Ryan has tried to focus on policy (most of which Trump has outsourced to Congress) and has been more circumspect in his criticism of the president. When Trump attacked immigrants from "s—hole countries," Ryan said the remark was "very unfortunate, unhelpful" and said a similarly discriminatory view was held about his Irish-American ancestors who thrived in this country. Ryan has recently made the case against Trump's tariffs, but he hasn't pushed any legislation to take away the president's authority to launch a trade war. Asked about the ongoing investigation by special counsel Robert Mueller on April 11, Ryan didn't back any legislation to protect the investigation but said, "They should be allowed to do their jobs. We have the rule of law in this country, and that's a principle we all uphold."

To many of those who believe Trump is unfit to be president and toxic to the Republican party and conservatism, Ryan's actions and rhetoric regarding the president have at times been disappointing. To his defenders, Ryan simply has been making the best of a bad situation, dealing with the world as it is rather than how he might wish it to be. Ryan's handling of this fraught moment in American politics, like the success or failure of his policy agenda, will be more easily judged in the years to come. ♦



The Broward Blame-Game

A teenage citizen-journalist battles the bureaucracy over the Parkland shooting. **By ALICE B. LLOYD**

Fort Lauderdale, Fla.
Something doesn't smell quite right in Broward, and the school district is the epicenter," announces the skinny kid at the microphone. He's 19-year-old Kenneth Preston, and he is promising the school board of Broward County "It will be made clear: the failures of the school system, and particularly the superintendent, in protecting our schools." The standing-room-only audience gathered in the school board building's main hall—where the nine board members and the superintendent preside magisterially beneath the school district's seal—whoops and applauds until the board president quells them with a note on decorum: "We don't applaud."

Nearly two months have passed since Nikolas Cruz shot and killed 14 students and 3 staffers at Marjory Stoneman Douglas High School in Broward County, the sixth-largest public school district in the country. The satellite news trucks are gone from the palm-lined drive of the south Florida campus, leaving only the armed officers patrolling the points of entry and the "Stoneman Strong" signs that line the fenced perimeter in memory of the slain. Last month saw the "March for Our Lives," led by Stoneman students whose eloquence earned them national fame before the school had even reopened. Counter-campaigns followed, led by another student who survived the shooting and a Trump-supporting father whose daughter died by Cruz's gun. The latter stood beside Florida governor Rick

Scott when he declared his Senate bid on April 9.

Students, parents, and teachers have descended on the school board here in the county seat to try to find out what went wrong at one of Florida's biggest, best, and, by the numbers, safest public schools. In a day of

In 2014, \$104 million was set aside from an \$800 million school-improvement bond issue to upgrade Broward County schools' physical safety and security. According to public records student Kenneth Preston has unearthed, the vast majority of that money was never put to use.

plodding hearings and votes overshadowed by the shooting, they've debated a "clear backpacks" policy and rejected a proposal to arm district teachers. And they've heard concerns about the county's disciplinary regulations, which were relaxed in 2013 to reflect a federal priority to "break the school-to-prison pipeline," and in response to federal findings that Broward's "zero-tolerance" policy disproportionately punished black students.

Kenneth Preston is here to present a report assigning fresh blame to the same old bureaucratic rot. In 2014, \$104 million was set aside from an \$800 million school-improvement bond issue to upgrade Broward County schools' physical safety and

security. According to public records Preston has unearthed, the vast majority of that money was never put to use. The planned upgrades—including a new alarm system for Stoneman that still hasn't been installed—were named "year-one priorities" in the proposal four years ago.

Only someone with a lot of time on his hands and a keen distrust of authority would dig up the damning public records. Enter Preston, an obsessive citizen-journalist in the making. He's a student in the district's online education program—which is "sort of a joke," he admits—since he dropped out of his charter high school with a debilitating bout of Lyme disease. The lackadaisical online curriculum has left him with a lot of free time: "The amount of documents that I've read—I wouldn't have had that time otherwise." Debate tournaments, his favorite activity back when he was a conventional student, prepared him for this foray into contentious county politics.

The Goliath to Preston's David is Broward County superintendent Robert Runcie, who was Arne Duncan's deputy in the Chicago school system. The "discipline matrix" Runcie wrote for Broward schools in 2013 closely reflected the philosophy of Duncan, and Duncan, Obama's first education secretary, singled out Runcie's reforms as a model of how to "keep kids in classrooms and out of courtrooms." The effects of such policies, which more than 50 districts adopted nationally, have sparked a bitter debate in Broward since the Parkland shooting. Reports in the days following Cruz's February 14 massacre revealed he'd been passed between six schools in his three years of high school and repeatedly disciplined for violent and disruptive behavior but, because of federal protections for special-needs students, never expelled for his offenses.

Preston's project began, he tells me, when he saw Runcie on the news in the immediate aftermath of the shootings. "He was saying things that very day—that 'There was no indication of this,' 'There was no indication of any threat by the student'—which turned

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Kenneth Preston tells the Broward County school board, 'Something doesn't smell quite right in Broward, and the school district is the epicenter.'

out not to be true. Things I had a hard time believing." He started researching the county's discipline reforms for his online journalism class and quickly came upon a wealth of relevant material. Soon "it was about a lot more than writing an A paper." He wrote a two-pronged 3,000-word report—on the school district's behavior-intervention program, which took effect the year that Cruz started high school, and on the fate of the \$800 million bond issue. "The number-one priority, as part of that bond program, was supposed to be safety," Preston learned from the original proposals the county's taxpayers had voted on. "There were things—music, technology—that all got moved on pretty quickly. Safety was put on the back burner."

The press release he published to stoke public curiosity about his reporting landed him in an uneasy and combative meeting with Runcie the afternoon of April 9, the day before he was to present his research to the school board. High up in the glass-walled school board building, in a conference room with a view stretching north toward Parkland, we met Runcie—smooth-talking, rail thin, and

impressively tall in brown and gold pinstripes and a gold-patterned tie. He towered over Preston and had brought 10 officials, including the Broward County chief of police, to hear and answer Preston's findings. Three Stoneman Douglas parents were present too: all three had children killed by Cruz.

Runcie opened the meeting with a casual air—"I meet with students all the time"—but added a note of procedural criticism. If Preston fancied himself an investigative journalist, Runcie said, he should have requested the meeting himself, and sooner. "Typically, you'd want to contact the subject," he added. Even so, he heard Preston's 20-minute presentation, and of the slow-going safety upgrades, he conceded, "It is absolutely true that the SMART program had a delay in the first year." He justified the delays, claiming that thereafter the preliminary work was technically always underway in some sense.

When Preston quoted the original plan, which names school safety a "year-one priority," Runcie became more condescending: "There is a difference between when projects start, when they're completed, and when the funds are made available." Indeed, the safety projects for Broward schools, among them the alarm system that could have saved lives at Stoneman, have been stuck in a nebulous stage for years—somewhere between funding and execution. Omar Shim, the school district's budget director, backed Runcie's insistence that, in some form, "all the projects have been initiated" and added a description of the unwieldy path of progress that follows any issue of a bond. Or, as he tactlessly put it, after "that gun goes off." One victim's father shook his head at the tone-deaf metaphor and afterward, vented his disgust to me: *Can't any of these people take responsibility?*

Indeed, when the topic moved from delayed school-safety upgrades to the relaxed disciplinary infrastructure that saw Cruz shunted between schools, avoid referral to law enforcement, and allowed to opt out of psychiatric monitoring, the assembled



Superintendent Robert Runcie oversaw a slackening of discipline policy and the delay of school safety upgrades.

district officials pointed to federal law and defended the county's policies. "We as a Broward County community made the decision that we were going to be treating our students differently," said Michaelle Valbrun-Pope, who is in charge of the district's student-support policies. "We don't want school leaders to say, 'If you do this, this is what will happen.'" "This is not an average student," she said of Nikolas Cruz, who was in a special-education program and so fell under a different disciplinary category than would a conventional student who exhibited his behaviors. "He has a disability." And Runcie scoffed at Preston's inquiry into Broward's policies on student behavior. "Are you suggesting," he challenged, "that the discipline matrix here is *connected*?"

But Preston isn't the only one. There is a growing anger that Cruz's violent and erratic actions at the six schools he attended over three years were not appropriately reported, documented, or dealt with because of policies that encourage school leaders to keep district teachers from reporting student offenses. "Teachers come to me and tell me, 'My principal's making me feel like it's my fault when

IMAGES: EMILIE MCGOVERN

students misbehave,’ and ‘I’m asking for help, and they’re still putting it on me,’” Anna Fusco, the Broward County teachers’ union president, tells me the following day. We are at a downtown café between sessions in the all-day school board meeting, and she is describing a form of negligence that doesn’t show up in any documents. “Management denies it,” she says, but hundreds of teachers have complained to her about the district’s “unspoken” rule to avoid referrals.

As I head back to the board meeting, I talk to a Stoneman Douglas teacher. Speaking on the condition of anonymity given the “media freeze” imposed on teachers since the shooting, she tells me that permissible lengths of suspension for a violent or misbehaving student have shrunk to 3 days in recent years—down from 10. Under the old system, she says, a student like Cruz would have been referred to local law enforcement. “What should’ve happened was: Somebody does something bad, then somebody calls the police, and then the police take the actions that are set up.” The sheriff’s office, she believes, “had the opportunity to Baker Act him”—to mandate an involuntary psychiatric evaluation—“and made a decision not to.” As we speak, the school board building’s parking lot is filling up in advance of the meeting’s public-speaker portion—and Preston’s presentation. But the teacher says she can’t attend: The school day is over, yes, but she has a second job to get to.

What the school board heard from Preston was unimpressive compared with his confrontation with Runcie the day before. His scheduled time was brief due to the press of speakers wanting to be heard. He referred to his findings, but did not read from his report. And at the end of the meeting, Runcie, by way of rebuttal, said he applauded Preston’s efforts but worried he was spinning the wrong story. “Without integrity in journalism, you have,” Runcie said, volleying a misquotation from *Macbeth* back at Preston’s allusion to *Hamlet*, “a tale with a lot of sound and fury yet saying nothing.”

After the meeting, I found Preston standing with *Sun-Sentinel* reporter Scott Travis, who tells us he’s been covering the delays in the school-improvement bond’s implementation for years. Foot-dragging like this isn’t out of the ordinary for Broward, but the county’s sluggish operations take on new meaning with a nationally resonant tragedy. At a school in Palm Beach County, where county-level

operations tend to run on time, he notes, they’d probably have had that state-of-the-art alarm system already.

Preston’s reporting can’t assign responsibility for the tragedy at Stoneman Douglas. But it does remind us how much bureaucratic buck-passing, from excused lags in local projects to blindly followed federal discipline guidance, goes unnoticed until tragic consequences bring it to light. ♦

Not Necessarily the Best Choice

Can a new system of voting really deliver civility?

BY CHRIS DEATON

The latest fad in American politics didn’t originate with a telegenic activist or a trending hashtag on Twitter. “Ranked-choice voting,” as it’s called, is instead the stuff of academics and election reformers more interested in political process than political food-fights. But its advocates are no less passionate about the potential of their cause than followers of an alluring leader or cultural movement—in fact, they framed the recent adoption of their idea in one of the nation’s least-populous states as a seismic event that could change the country for the better.

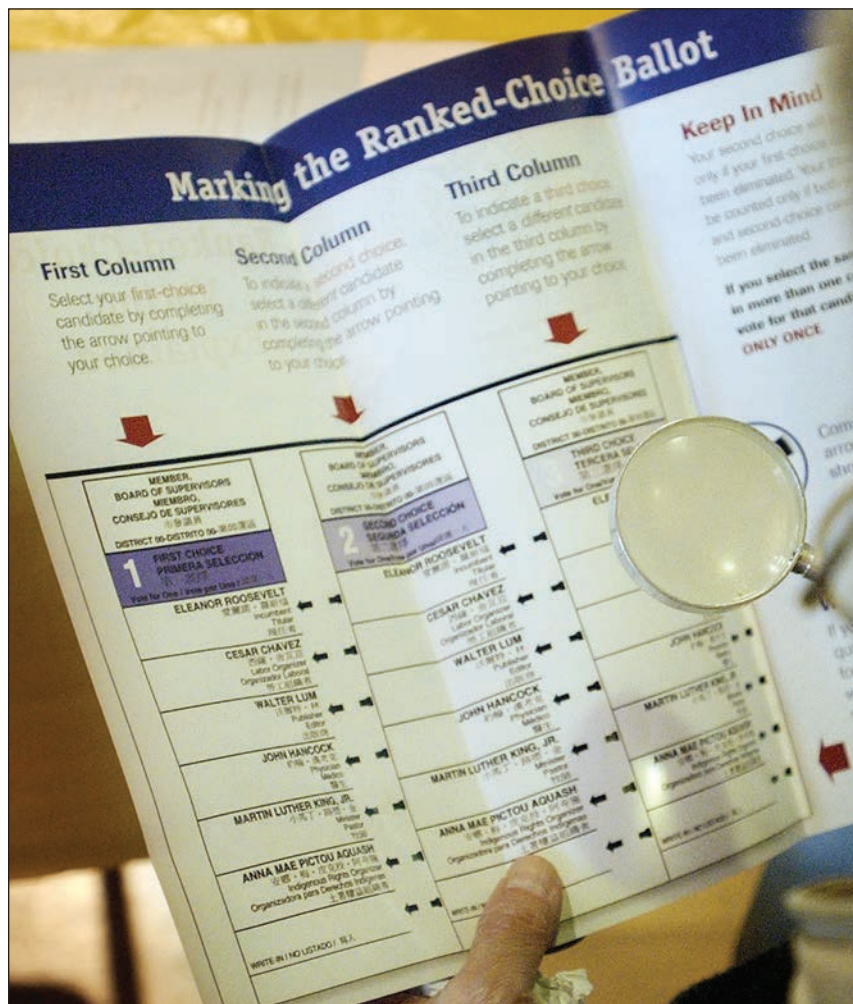
Ranked-choice voting (RCV) replaces typical election formats in which voters select just one candidate. With RCV, voters rank their options: In a five-way race, for example, voters could rank candidates one through five, or fewer than five, if they chose. If a candidate finishes with a majority of number-one rankings, the election is over. If no one does, most RCV elections proceed to “instant runoff,” wherein the last-place finisher’s votes are reallocated to the remaining

contenders. If a ballot for the fifth-place finisher chose Oprah as a second choice, the ballot becomes a first-place vote for Oprah. The process eliminates candidates and redistributes votes as necessary until there is a winner.

To supporters of the concept, the urgency of implementing RCV is that it will encourage civility and deter demagoguery in these hopelessly tribal times. According to an NPR/*PBS NewsHour*/Marist poll taken last July, 70 percent of Americans said that civility had declined since President Trump took office. RCV is intended to stamp out the kind of fiery and furious campaigning that characterized the last presidential election and promote a more thoughtful public discourse. After all, there’s nothing to be gained by alienating an opponent if that opponent’s voters could rank you second on their ballots, and their second-place votes could redound to your victory.

Ranked-choice voting’s supporters are passionate about the positive reception the format has received in the cities where it’s been tried, such as San Francisco (since 2004), Minneapolis (2009), and Oakland (2010), all at the mayoral level. Researchers have found that voters in these cities

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A San Francisco voter uses a magnifying glass to study a mock 'ranked-choice' ballot, October 26, 2004.

assessed campaigns more favorably than ones who live in jurisdictions without RCV. "There appears to be a systematic relationship between availability of RCV elections and perceptions of relatively more positive electoral campaigns," a 2014 University of Iowa study concluded.

Supporters of RCV, like the advocacy organization FairVote and a bevy of notable politicians, have larger ambitions: They want to see the system used for House and Senate campaigns across the country. They will have an early opportunity to do so in Maine. In November 2016, the state's voters approved a ballot measure that would adopt RCV beginning in June with the Republican and Democratic primaries for Congress and governor. Such was the hype that "democracy

experts called the statewide referendum vote that year the second most important election in the country behind the presidential election," according to the RCV cheerleader Committee for Ranked Choice Voting. That may be overstating matters. Maine, however, is poised to do what other states have not managed to achieve. RCV failed to advance in Illinois when then-state senator Barack Obama proposed ranked-choice legislation in 2002; in Alaska, where voters opposed a ballot measure that same year almost two-to-one; and in Vermont, where Sen. Bernie Sanders has testified before the state legislature in favor of RCV.

Maine's 2016 referendum was not a wholehearted embrace. Lawmakers delayed the measure and the state

supreme court issued an advisory opinion disapproving it, but a superior court judge said in April that RCV may be used during the June primaries. Voters will need to reapprove RCV in June in yet another ballot referendum for it to be used in November for the general midterm election. Despite this slow-rolling momentum, ranked-choice voting's most ambitious supporters say we're in a watershed moment for the reform.

"Our current electoral system is deeply broken and is contributing to . . . increasingly dangerous hyper-partisanship," wrote Lee Drutman of the centrist think tank New America. "We need to start experimenting with alternatives, and fast. Ranked-choice voting would be a great start."

Perhaps. The public's feelings about the political process aren't especially positive right now, and petty contests for national office don't raise the electorate's spirits. But is RCV the cure for partisan indulgence?

"I think that this reform is meant for nonpartisan races. It's sort of an attempt to get rid of partisanship," says professor Lonna Atkeson, who directs a research program on election administration and rules at the University of New Mexico. "Well, you know what? Party is the best cue in the world to tell voters how to align their interests to actual candidates. You take that away, I think you reduce the number of ideas in the election. You reduce innovation."

The high-profile test cases for ranked-choice voting in the United States have shared two traits: The population skews heavily toward one ideology, and the viable candidates are uniformly of one party. RCV is a good fit for municipal elections in heavily Democratic cities such as those in the Bay Area, Minneapolis-St. Paul, and Santa Fe, for example.

Maine, by contrast, has a more balanced electorate. This year, two statewide campaigns will offer useful test cases for RCV, if it survives the ballot measure in June: Republican representative Bruce Poliquin is defending his seat in a red-leaning congressional district, and the race to succeed

Republican governor Paul LePage features wide-open primaries in both parties, with more than 10 declared candidates in each.

Maine is unusual among states in that it often has more than the traditional two parties on the ballot. “We have frequently had three or four candidates getting a significant number of votes, and letting the supporters of people who have fallen by the wayside have some say in the election makes some sense,” says American government professor Sandy Maisel of Colby College. “We’re not adding third-party candidates—we’ve always had third-party candidates, for 50 years, anyway.” This is especially true of Maine’s gubernatorial races. Democrat-turned-independent Angus King won the governorship in 1994 with just 35 percent of the vote compared with Democrat Joseph Brennan’s 34 percent and Republican Susan Collins’s 23 percent. Sixteen years later, Paul LePage won with 38 percent of the vote to independent Eliot Cutler’s 36 percent; the Democrat, Libby Mitchell, received 19 percent. Both fields had four candidates who received at least 5 percent of the vote. This trait makes Maine a rare bird, but also an appealing one for advocates of ranked-choice voting.

But what about elections in which the only viable candidates are the Republican nominee and the Democratic nominee—the significant majority of campaigns for House, Senate, and gubernatorial races across the nation?

One idea is that RCV could attract new or better office-seekers simply on account of the format. “You have the freedom to vote for the candidate you like best without worrying that you will help to elect the candidate you like least,” the Committee for Ranked Choice Voting notes. In other words, RCV turns spoilers into viable options, empowering people to vote their conscience. “It’s a solution to the problem of how to uphold majority rule and give more voice to voters by presenting them with more than two options,” wrote former Vermont governor Howard Dean in the *New York Times* in 2016.

Some political experts, though, are skeptical that ranked-choice voting alone can influence candidate fields. “When you’re motivated to be a candidate, I don’t think you probably say, ‘Oh, this is going to be an easier election or a nicer election than the legislative contest, and so I want to go there.’ I think you say, ‘Where’s my best chance of winning? Where is there a seat open?’” Atkeson says. “That’s what all the political science literature says.”

“If the RCV format takes hold in primaries, then the general election in almost all cases will consist of just

Some political experts, though, are skeptical that ranked-choice voting alone can influence candidate fields. ‘When you’re motivated to be a candidate, I don’t think you probably say, “Oh, this is going to be an easier election or a nicer election than the legislative contest, and so I want to go there.”’

two major-party candidates,” Bowdoin College government professor Michael Franz told me in an email. “Yes, Maine has had some high profile three-way races in which RCV would make for an interesting dynamic, but not likely in ways that would reduce a lot of negativity. This is because Democrats would still attack Republicans, and vice versa, [and] voters these days usually don’t rank the two parties ahead of a more moderate independent third-party candidate. So party-on-party attacks would still rule the day.”

There are circumstances wherein ranked-choice voting appears to foster cordiality among rivals. The recent elections for mayor and city council in Santa Fe are an example. In consultation with Atkeson, FairVote conducted an exit poll measuring voters’ perceptions of the candidate field and their satisfaction using RCV. Two out of three voters observed a more

positive “tone” in the mayoral race than past ones, and 80 percent said they were “very satisfied” with their voting experience. However—and it’s a big however—Santa Fe’s election was functionally nonpartisan; all five candidates for mayor were registered Democrats. Nonpartisan, local elections tend to have far fewer ideological sticking points, and they reward likability. There’s little incentive for a candidate to go negative under these circumstances.

“What is a campaign supposed to do?” Atkeson says. “A campaign is supposed to raise the issues. It is the competitiveness of that election that leads to voter education,” she notes. “So if you reduce that competition, and you make it all nice and dandy, does that actually hurt the voter? Because all they’re left with is a slate of personalities.”

This underscores what could be called the “Ben Sasse problem”: mistaking civility in politics for substance. In his maiden Senate speech in 2015, Sasse distinguished between the two concepts: “Two weeks ago, in discussion about this with one of you, I was asked: ‘So you are going to admit our institutional brokenness and call for more civility on the floor?’ No. While I am in favor of more civility, my actual call here is for more substance,” he said. “This is not a call for less fighting, but for more meaningful fighting. This is a call for bringing our A-game to the debates on the biggest issues here, with less regard for the 24-month election cycle and the 24-hour news cycle. This is a call to be for things that are big enough that you might risk your reelection.”

Sasse was speaking about the Senate’s political deficiencies, but he could have been talking about the country at large.

“The problem is that the issues that divide the parties are issues that don’t lend themselves to compromise very easily, and they are the most salient issues for voters,” Maisel says. “How do you compromise on abortion?” he asks. Ranked-choice voting cannot paper over such disagreements. But one could also argue that it shouldn’t. ♦

Family Malpractice

Ending the law's injustice to Indian children—and parents. BY TIMOTHY SANDEFUR

It's hard to imagine the misery of a mother whose child is snatched from her arms. It's an agony Ingrid Ronan Johnson's mother experienced on March 18, when Miccosukee tribal police arrived at the maternity ward with an order from a tribal court commanding that 2-day-old Ingrid be taken away. It's the grief Summer Page felt when—weeping in her southern California driveway—she watched her 6-year-old foster daughter Lexi driven away by county officials at the behest of the Mississippi Choctaw tribe and sent to live in Utah. It's the frustration of a Tohono O'odham mother known in court documents as Justine, who was barred by Arizona judges from letting her new husband adopt her son. And it's the anguish that a Texan mother called J.J. suffered when her own tribe's government vetoed the adoption she'd arranged and ordered her baby boy sent to New Mexico to live with strangers.

These traumatic stories are the consequences of a federal law called the Indian Child Welfare Act (ICWA), which was passed in 1978 in an effort to protect Indian families from unjust intrusions by state governments. But today it often devastates the families it was supposed to protect.

For decades before the ICWA was passed, child welfare officials often took Indian children from their parents, sometimes on flimsy pretexts, and sent them to live with white families or in boarding schools where they were punished for speaking tribal languages or practicing tribal religions. Many were abused or molested. But ICWA went beyond ending such abusive practices.

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It also expanded the power of tribal governments—placing them, as the Supreme Court put it, “on a parity” with parents. In practice, that means tribal officials can block adoptions parents agree to and even veto a mother's efforts to protect her kids.

The problems begin with ICWA's expansive definition of “Indian chil-



Baby Ingrid and her mother, March 7

dren.” ICWA applies not just to tribal members but to children who are “eligible for membership” and are the biological children of members. Every tribe has its own eligibility criteria, but all are based exclusively on genetics. That means a child like Lexi, who has no *cultural* connection to a tribe—speaks no tribal language, practices no Native religion, does not live on a reservation—qualifies as “Indian,” whereas a child raised on a reservation by Native parents would not qualify if she doesn't fit the racial profile. DNA is all that matters.

ICWA, then, subjects Indian children to rules that differ from those that apply to kids of all other races. It overrides the “best interests of the child” rule and segregates the kids by race, even if this is contrary to the wishes of parents.

That's what happened in an Arizona

case last year when Justine, a tribal member who lives off reservation, asked a state judge to terminate the rights of her ex, then in jail for several violent crimes, so that her new husband could adopt her boy. Had the child been of any other race, ordinary state law would have applied—which requires a parent to prove by “clear and convincing evidence” that terminating the other parent's rights is warranted. That rule was adopted in 1982, when the U.S. Supreme Court ruled that the lenient “preponderance of the evidence” standard was too lax in termination cases, but that the stringent “beyond a reasonable doubt” requirement was too severe. Today, every state uses the “clear and convincing” rule because the more strict “reasonable doubt” standard, as the Supreme Court said, “would erect an unreasonable barrier to state efforts to free permanently neglected children for adoption.”

ICWA, however, overrides state law and mandates the “beyond a reasonable doubt” standard instead. It also requires testimony from expert witnesses. That's a more stringent requirement than applies in criminal courts, meaning that it's easier to put defendants on death row than to terminate parental rights in cases involving Indian children. An Arizona judge therefore forbade Justine from terminating her ex's rights and from completing the adoption. A different rule would have applied if her son had been white.

ICWA wasn't meant to police family disputes. But because it applies to all cases involving Indian children, it's regularly invoked in such cases. That's what happened in the case of baby Ingrid. According to news reports, tribal police removed her from the hospital thanks to an order that the baby's grandmother obtained from a tribal court, based on allegations the grandmother levied against the baby's father. ICWA lets tribal courts issue orders in cases involving children who are genetically entitled to tribal membership, even if they and their parents don't reside on tribal lands. But state courts are normally asked to approve such orders before they're executed. Because

EMILY MICHOT / MIAMI HERALD / TNS / NEWSCOM

no such approval occurred in Ingrid's case, tribal officers were forced to surrender the child a few days later.

But because ICWA applies to children based on their genetics, it's not unusual for tribal courts to assert authority without regard to the geographical and constitutional limits on their jurisdiction. Those limits normally prevent judges from deciding cases involving people who lack what lawyers call "minimum contacts" with the court's location. The Constitution forbids, for instance, a Maine judge from deciding an adoption case in Texas, even if the child's grandparents once lived in Maine. ICWA, by contrast, gives tribal governments power to force state judges to transfer child welfare cases into tribal court even if the child lacks "minimum contacts" with the tribe.

In one ongoing California lawsuit, three Fresno-area orphans whose parents were killed in a car accident are the focus of a custody fight between non-Native relatives and the Miwok tribe, of which their father was a member. Although the children never lived on tribal lands—located nearly 200 miles away—a tribal judge commanded that the children be handed over.

In another case now pending in Ohio, a tribal judge in Arizona ordered Ohio officials to send a child who was born in Ohio and has lived there his entire life to live on a reservation near Phoenix with strangers he's never met. The Ohio court of appeals ruled in March that such race-based jurisdiction would violate the "minimum contacts" rule, but tribal lawyers, undaunted, plan to appeal again. No court would tolerate such tactics if the child were black.

Still more disturbing is ICWA's requirement that state officials make "active efforts" to keep families together—meaning they must often return Native children to abusive homes. State law typically requires only "reasonable efforts," meaning that parents must be offered rehabilitation or basic assistance before their children are taken away permanently. But that requirement is excused in cases involving "aggravated circumstances," which

means states don't have to return children to homes where they've been abused or molested. ICWA's "active efforts" requirement, though, is stricter. It requires more than "reasonable" efforts (though courts have never said what, exactly), and there's *no* exception for "aggravated circumstances." That means Indian children must be returned time and again to homes where they are mistreated.

In one recent Nebraska case, three Sioux girls were repeatedly sent back to their abusive father—and when state officials finally took them away for good, the state's highest court overrode that decision on the grounds that the state hadn't satisfied the "active efforts" requirement. After still more abuse, a juvenile court judge at last ordered them permanently removed in an order that acknowledged that they had "experienced lifetimes of trauma." No such trauma would have occurred if the girls had been Asian.

ICWA also imposes race-matching requirements on foster care and adoption of Indian children. It requires that they be placed in Indian foster homes rather than with non-Native foster families—and that they be adopted by "other Indian families" rather than by non-Natives, except in rare circumstances. Because these requirements apply to Indians generally, *regardless of tribe*, the result is that an Alaskan Inuit child must be adopted by a Chickasaw family in Tennessee—regardless of the cultural gulf that separates these tribes—before she can be adopted by parents of other races. Combined with the "reasonable doubt" requirement for termination of parental rights—usually a prerequisite to adoption—these rules make it extraordinarily difficult for Indian children to be adopted, even if the birth parents approve.

In one recent Texas case, the parents of a Navajo boy decided they wanted his foster family to adopt him because, as his birth mother, J.J., testified, "I can see he loves them." Tribal officials disagreed, though, and they persuaded a judge to take the boy from his foster family and send him to live on the reservation in New Mexico instead, with a couple he'd known for

only three hours. Fortunately, tribal officials reversed themselves months later—but the delay and anguish would never have happened if the child had been Hispanic.

ICWA's anti-adoption rules are so burdensome that foster families who might otherwise offer homes to kids in need choose not to shelter Indian children, lest they become attached and then suffer the agony of separation in a slow, expensive, race-based lawsuit. When the *Phoenix New Times* asked a foster mom who also worked at the state's Department of Children's Services and was familiar with ICWA whether she would agree to foster an Indian child, her answer was clear: "No," she said. "Nope. Nope. Nope."

ICWA's supporters also claim that it's legitimate to treat Indian children differently because tribal governments are sovereign. But all Indians are citizens of the United States, and the courts of France or China could never assert power to decide child custody cases involving children in Nevada or Connecticut just because the children involved were of French or Chinese descent. Nor could Congress create such an arrangement. In *Reid v. Covert* (1957), the Supreme Court ruled that the federal government cannot make a treaty with a foreign country that subjects American citizens to a separate court system that lacks our Constitution's due process guarantees. Yet that's exactly what ICWA does. All Indian children are citizens of the United States, but this law segregates them into a distinct, less-protective legal system that nullifies the "best interests" rule and sometimes forces cases into tribal courts where the Constitution doesn't apply.

That doesn't preserve sovereignty—and it certainly doesn't expunge the injustices of past generations. Instead, it inflicts new injustices on America's most vulnerable minority. Native American children are at greater risk of virtually every social pathology, from gang membership to alcoholism to molestation, than any other demographic. Yet ICWA subordinates their needs to racial considerations—for the express purpose of keeping Indians

separated from their fellow Americans.

The story of baby Ingrid, at least, seems to have a happy ending. She has been returned to her parents. But for too many Indian kids, the story ends differently—often in poverty, neglect, and abuse. There are adults

out there ready and willing to help them, except that federal law says they're the "wrong" race. It's time we set aside these obscene racial barriers and give these children the same legal protections that all other American kids enjoy. ♦

Challenging China

Washington shouldn't neglect Taiwan and Hong Kong. BY JAMIE FLY & GARY SCHMITT

President Trump's National Security Strategy bluntly states that China is challenging "American power, influence, and interests, attempting to erode American security and prosperity." And while much attention has been focused on Beijing's expanding military presence in the South China Sea, its effort to expand its influence across Asia and Europe through its "one belt, one road" projects, and unfair trade practices, China's challenge to the administration's vision of a free and open Indo-Pacific region is increasingly taking place in Taiwan and Hong Kong.

Since the inauguration of Taiwanese president Tsai Ing-wen in 2016, Beijing has ratcheted up pressure on the world's only Chinese-speaking democracy, taking aim at Taiwan economically, militarily, and diplomatically. It has curbed Chinese tourism to Taiwan and squeezed Taiwanese companies doing business on the mainland to do Beijing's bidding back home. China has made naval and air exercises around Taiwan routine and established a northbound civilian air route up the Taiwan Strait without consulting Taipei. Nor is Beijing shy in using its own version of "sharp power"—through information warfare and financial

coercion—to sow political dissent within Taiwan and attempt to purchase the loyalty of the Taiwanese elite. And China has stepped up efforts to further isolate Taiwan diplomatically by attempting to flip the island's few existing state-to-state formal ties to itself and by blocking Taiwan's representatives from even observer status at international organizations like the World Health Organization and Interpol.

For her part, President Tsai has responded calmly to Beijing's pressure tactics, keeping open the possibility of engagement while looking to expand relations with the neighboring states of South and Southeast Asia. The Taiwanese public remains wary of any talk of unification with the mainland, peaceful or otherwise, with almost three-quarters supporting a position of *de facto* or *de jure* independence from China. The Nationalist party (KMT) that long ruled Taiwan remains willing to accept the notion that the island is part of "one China," but the KMT is on life support, with new opposition parties emerging that are even more pro-independence than President Tsai's Democratic Progressives (DPP).

Slightly further south and west, China has stepped up its campaign to reduce Hong Kong's promised autonomy. Students and other activists protesting Beijing's tighter grip have been met with harassment, arrests, and jail time. Some pro-independence legislators have been disqualified and others prevented from running for office.

A diminution of the independence of the once-vaunted judiciary and of the city's vibrant free press, not to mention abductions of residents by Chinese state security agents, are seen by many in Hong Kong as clear signs that Beijing has no intention of abiding by its promised governing paradigm of "one country, two systems." To the contrary, President Xi Jinping compares the relationship to "a long-separated child coming back to the warm embrace of his mother." But if Hong Kong is a child, it's more like one raised in another home, with little affection for its mother. One poll found that only 3 percent of 18-to-29-year-olds in Hong Kong think of themselves as being broadly Chinese.

Despite the Trump administration's stated focus on the pervasive threat of Chinese power, its reaction to Beijing's pressure campaign toward Taiwan and Hong Kong has been muted at best.

In Hong Kong, passive observation seems to be the name of the game. State Department officials have gone to great lengths not to offend Beijing over its handling of Hong Kong and its persecution of the city's democrats. During the tenure of Secretary of State Rex Tillerson, the State Department resisted congressional efforts to update the 1992 Hong Kong Policy Act to make clear to Beijing that America has an interest in the city's autonomy.

On Taiwan, so far, it's been largely confusion. The president-elect famously took a phone call from President Tsai in late 2016 but then, without any policy review by senior staff, reaffirmed the one-China policy so the Chinese president would take his call and proceeded to publicly state that he would do nothing about Taiwan without first consulting President Xi, a clear violation of U.S. policy dating back to President Reagan's "six assurances" to Taipei.

With a number of key policy positions left unfilled during the administration's first year, the departments of State and Defense have been slow to signal just how much effort will be made to back Taiwan's attempts to participate

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in various multilateral forums or what kind of arms package might be offered to support Taiwan's defense needs. The State Department did recently dispatch a deputy assistant secretary to Taipei to reiterate the administration's commitment to Taiwan and, with Pentagon backing, Washington has okayed American defense companies selling technology in support of Taiwan's plans to build its own submarines.

But far too often Taiwan is seen as a liability, not what it is: a democratic island of stability of more than 20 million that, if permitted, could be an economic and strategic partner for the United States in the region. There is unfulfilled potential in the relationship, if the administration would only take advantage of the Taiwan Travel Act, which calls for the repeal of self-imposed restrictions on what level of government or military officials can visit Taiwan, and this year's defense authorization bill, which supports strengthened ties with the Taiwanese military. For far too long, one administration after another has fallen short of the policy mandates laid out in the 1979 Taiwan Relations Act, which declared peace in the Taiwan Strait to be a U.S. national interest and called for maintaining close relations with the people of Taiwan.

There is an opportunity at hand to reverse course. Taiwan can play a key role in the Trump administration's concept of a "Free and Open Indo-Pacific." Taiwan has been neglected in previous U.S. regional initiatives, such as the Obama administration's "pivot to Asia." As a geostrategic matter, Taiwan serves as a breakwater to China's ambitions to push its military power into the broader Pacific and sits between two states—Japan and the Philippines—with which the United States has formal security ties. More broadly, the Tsai government has launched a "New Southbound Policy" to bolster a full range of relations with the Southeast Asian and Indian Ocean states. These efforts could easily complement Washington's own cooperation with Australia, India, and Japan. Through its humanitarian assistance in the region,

its participation in the coalition to counter ISIS, and its effort to enforce sanctions against trade with North Korea, Taiwan has shown that it is a responsible international partner.

The administration could also do more to help Taiwan push back against Beijing's campaign to isolate the island diplomatically. The United States can take a stronger stand with Taiwan's diplomatic allies to encourage them not to abandon those relationships under pressure from Beijing. The State Department should also make



Taiwan's President Tsai Ing-wen, October 10, 2017

it a priority to assist Taiwan's efforts to gain entry to multilateral organizations, even if only as an observer. Given the size of Taiwan's population and economy, it should have a voice in key multilateral forums on international law enforcement, public health, and civil aviation. The State Department should help build a coalition to support Taiwan's efforts to participate in these forums, starting with Japan and Australia but also including U.S. allies in Europe. If China wants to politicize these nonpolitical issues, there should be repercussions. The administration and Congress should examine China's role in multilateral organizations that block Taiwan and assess whether continued support of these agencies is appropriate.

Finally, as the tenth-largest trading partner of the United States, Taiwan should be given priority as the administration develops its regional trade agenda. Taiwan had hoped eventually to join the Trans-Pacific Partnership (TPP). However, with the president

opting out of TPP for now, advances in the U.S.-Taiwan economic relationship appear uncertain. The fact that Taiwan was not exempted from the president's initial round of tariffs on steel and aluminum is yet another reminder of how counterproductive U.S. policy toward Taiwan has been.

If current U.S. policy toward Taiwan is confused, it is still a step above the persistent American silence on events in Hong Kong. The 1992 act gave Hong Kong a preferred status, stipulating that Washington would continue to deal with the territory in commercial and financial matters, transportation, access to technology, and international organizations—regardless of the transfer of sovereignty from the U.K. to China. However, as the law makes clear, this carve-out for Hong Kong rested on China's living up to its pledge of autonomy for the territory internally and respecting Hongkongers' fundamental rights as set out by the International Covenant on Civil and Political Rights. Long forgotten, but still a matter of

black-letter law, the act states, "The human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong."

At a minimum, the '92 act needs updating to reflect China's backsliding. The goal should be to make it more costly for Beijing to squeeze Hong Kong, with perhaps a first step being a provision calling for sanctioning Chinese officials who have a hand in undermining the territory's autonomy.

Hong Kong and Taiwan are effectively canaries in the coal mine, providing advance warning to the United States and its allies of dangerous Chinese ambitions. Congress and the Trump administration would do well to keep a close watch on the health of the two to make sure they don't become the first victims of China's increasingly toxic behavior. Without a U.S. agenda supporting freedom for Taiwan and Hong Kong, the new U.S. strategy toward the region will ring hollow. ♦

Jeff Sessions and His Enemies

*A rare left-right agreement in Washington:
disliking the attorney general*

BY FRED BARNES

Attorney General Jeff Sessions has critics, detractors, rivals, backbiters, and saboteurs—a real enemies list.

Let's see who's on the list: the president's son-in-law Jared Kushner, Senator Cory Gardner of Colorado, EPA administrator Scott Pruitt, conservative funders Charles and David Koch, Mark Meadows and Jim Jordan of the House Freedom Caucus. And that's just some of the prominent Republicans and conservatives.

Here are others: Senator Cory Booker of New Jersey, Senator Pat Leahy of Vermont, Governor Jerry Brown and Senator Kamala Harris of California, Representative Luis Gutiérrez of Illinois, the marijuana lobby, the mainstream media. They're Democrats and liberals who loathe Sessions.

All in all, it's a pretty impressive list of people who've clashed with Sessions. But they aren't his only problem. Sessions is believed to be hanging on to his job by a thread. President Donald Trump is unhappy with him and leaves the impression he's ready to fire Sessions at any moment. In Washington, job insecurity is a sign of political weakness.

Yet Sessions is anything but weak. Operating from a cramped office in Washington, across Constitution Avenue from the Museum of National History, he's the powerhouse of the Trump administration. He's highly motivated and audacious. In March, he traveled to California and

read its leaders the riot act for refusing to cooperate with federal immigration officials. In Washington, he's leaned on two agencies to quit blocking the importation of a death-penalty drug.

Those are but two signs of his political strength. At the Justice Department, he's flipped law enforcement policy on its head. He replaced Obama AG Eric Holder's tough-on-police, easy-on-sentencing philosophy with intense support for cops and tough sentencing. He's puts a higher priority on the welfare of crime victims than that of felons—another reversal.

Both friends and foes say Sessions has been brilliantly successful. "Sessions is almost certainly the single most effective implementer of Trump's vision in the entire administration," David Cole, the national legal director of the American Civil Liberties Union, wrote in the *New York Review of Books*. "No cabinet member has been more diligent and single-minded in pursuing Trump's policies." Cole made it clear he disagrees with those policies.

Sessions tells me he is only following Trump's clear and simple orders on law enforcement: Reduce crime, support the police, go after transnational criminal organizations. "Our goal is not to fill up the jails," he says. "Our goal is to enhance public safety in every community in America."

On immigration, he didn't require orders from the White House. As a senator from Alabama for two decades, he sidetracked more immigration reform bills than Trump ever heard of. The president wants a deal letting so-called dreamers remain here legally. Those are the kids who arrived in the United States as infants and children of



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illegal aliens. Sessions isn't interested. We'll see who prevails, Trump or Sessions. The smart money favors Sessions.

Given the AG's success, will Trump still force him out? That's highly unlikely. Sessions has a stronger hold on his job than ever. This was unexpected but there's a reason. Things never just *happen* in Washington.

It started with EPA chief Pruitt's desire to be attorney general. With Washington swimming in rumors about the demise of Sessions, Pruitt and his allies spread the word that he was willing and able to be attorney general.

This did not sit well with Senate majority leader Mitch McConnell, chairman Chuck Grassley of the Senate Judiciary Committee, and Leonard Leo of the Federalist Society.

Along with White House counsel Don McGahn and the president, they constitute the cabal committed to filling the top tiers of the federal courts with conservative judges. The Pruitt-for-Sessions scheme threatened their plans. Grassley, by the way, declared last summer he wasn't going to sit through another round of confirmation hearings for an attorney general in this session of Congress.

But with Sessions gone, it would be difficult for Grassley to avoid spending the rest of the year on anything but that. More judges? Forget it. And if Democrats capture the Senate in the midterm elections in November, the chance to confirm more conservative judges would have been frittered away.

But the White House saved the day. Pruitt was told to put a plug in the talk about being AG. John Kelly, the White House chief of staff, is said to have delivered the news. Trump's part was to cease abusing Sessions in tweets for having recused himself from the investigation of Russia-Trump collusion. The president went cold turkey for several weeks before indulging in a single nasty tweet.

Still, anti-Sessions sentiment lives on in the Trump family. Jared Kushner, Ivanka Trump's husband, is a supporter of criminal justice reform, which Sessions opposes. Pruitt was Kushner's hope for attorney general and possible backer of the reform bill.

Sessions specializes in speeches to police and law enforcement groups. Aides call them "off the shelf" speeches since they all make the same points. But Sessions's address to the California Peace

Officers Association in Sacramento in March was different.

Since governor Jerry Brown had turned California into a "sanctuary" state, Sessions had a special message to deliver. Laws had been passed to bar state officials from cooperating with federal immigration enforcers, particularly those who would corral illegal immigrants upon their release from jail. Sessions finds sanctuary cities, much less states, to be offensive. They put immigration agents in danger.

So there is no love lost between Brown and Sessions. When Brown's office contacted Sessions's office in the week before his speech, the call was not put through. The day before Sessions arrived in Sacramento, the Justice Department filed suit against California to invalidate its sanctuary laws. And the situation got even less friendly when Sessions delivered his speech. He was loaded for bear.

"Immigration law is the province of the federal government," he said. "I understand that we have a variety of political opinions out there on immigration. But the law is in the books and its purpose is clear. There is no nullification. There is no secession. Federal law is 'the supreme law of the land.' I would invite any doubters to Gettysburg, and to the graves of John C. Calhoun and Abraham Lincoln."

Sessions is a small, likable man. The *Almanac of American Politics* describes him as genial but tenacious. Californians saw little of his

genial side. "California is using every power it has—and some it doesn't—to frustrate federal law enforcement. So you can be sure I'm going to use every power I have to stop them."

He addressed police officers directly. "We are going to fight these irrational, unfair, and unconstitutional policies that have been imposed on you and our federal officers," Sessions said. "We are fighting to make your jobs safer and to help you reduce crime in America. We are fighting to have a lawful system of immigration that serves Americans. And we intend to win."

The *Washington Post* said his remarks were "notable for their aggressiveness." Brown didn't like them. He said Sessions should apologize for "bringing the mendacity of Washington to California."

Kamala Harris didn't like the speech either. "I think that Jeff Sessions in particular should understand when he starts evoking Civil War comparisons it's going to be interpreted as highly offensive, and if I were him, I'd avoid making Civil War comparisons," she said.



Sessions speaking in California, March 7

This wasn't the first time Harris expressed differences with Sessions. In her first year in the Senate in 2017, she attracted attention by repeatedly interrupting a witness at a committee hearing. It's an old tactic designed to prevent someone from delivering coherent testimony. Virginia senator Tim Kaine, Hillary Clinton's running mate, tried it on Mike Pence, Trump's veep candidate, in the vice presidential debate in 2016. He was merely irritating.

When Sessions testified before the Senate Intelligence Committee, Harris tried to disrupt him. "She kept cutting in, cutting in, cutting in," a Republican aide said. Harris didn't stop until Senator John McCain of Arizona intervened. "Let him answer the question," he said. This worked.

For a Southerner, Jeff Sessions, 71, has an unconventional view of Lincoln. He didn't understand just how unconventional it is until he was preparing for a Lincoln Day speech at the Union League of Philadelphia on February 12.

"I just sat down on Sunday afternoon and wrote some personal reflections on Lincoln and the republic," Sessions says. "Probably most of it I just wrote up based on what I was thinking about the subject."

I asked him about one sentence in the speech that intrigued me. I'd never heard the sentiment before, at least from a Southerner, and it turned out Sessions hadn't either—that is, until he wrote it and then spoke it. This is what he said: "If it is one's fate to lose a brutal war, one must feel fortunate indeed to have lost it to the noble Abraham Lincoln."

Sessions told me he'd "never heard anybody express that. It just came to me as I was laying down my thoughts about what to say to the Union League Club. . . . I said a few things I'd never thought through. I think that I was correct that although Lincoln led a brutal war to victory, he clearly had a vision for postwar reconciliation that was extraordinary, and the South in losing the war was lucky to lose it to a leader like Lincoln."

In his speech, Sessions offered his overall view of the Civil War without mentioning a Lost Cause:

"The thing was brewing from the beginning of the republic. Though many Southerners try to say otherwise—and I love my people—slavery was the cause of the war. It was not states' rights or tariffs or agrarian versus industrial economies. Those issues were solvable and would have been solved. The cloud, the stain of human bondage—the buying and selling of human beings—was the unsolvable problem and was omnipresent from the beginning of the republic. And the failure, the refusal of the South to come to grips with it—really to change the immoral system of enslavement—led to the explosion. As

to slavery, it had to end. And the nation could stand the disgrace no longer. And Lincoln came."

It may seem odd that states' rights is a hot topic in the Trump era, but the issue is busting out everywhere. It's also odd that Jeff Sessions, a man from south Alabama, is not the champion of states' rights but the leading opponent. He's for the feds over California's protectors of illegal immigrants. He sounds like Andrew Jackson in 1832 when Jackson declared, "the Constitution of the United States . . . forms a union, not a league." Jackson denied states the right to nullify federal laws.

Which leads us to the fight between Sen. Cory Gardner of Colorado and Sessions. The question is whose laws should have authority over marijuana. Sessions, like Jackson, says federal power is supreme. Gardner says the state should be in charge and was, until Sessions got involved.

In 2012, Colorado legalized the recreational use of marijuana, though a federal law that made such use a crime was still on the books. A conflict was avoided by the Cole Memorandum—named for Obama's deputy attorney general who wrote it—that promised the federal statute would not be enforced in Colorado.

Sessions withdrew the memo. Gardner promptly retaliated. He put a hold on nominees for assistant secretary posts in the Justice Department. Gardner has since released the assistant secretary for national security, but the others are out in the cold, their nominations stalled indefinitely. There the matter lingers, as negotiations move along quietly.

Gardner says the federal government "should respect the will of the states who have spoken overwhelmingly on this issue." His allies call him "a fighter for states' rights." And in this struggle, he is.

The Cole memo winked at marijuana, allowing it to be sold and consumed freely while federal authorities acted as if nothing suspicious was going on. But Sessions says he's not empowered to do that. "Federal law is not abrogated if a state changes its law," Sessions says. "The attorney general is not able to withdraw federal laws. I can't direct our people not to enforce the law and won't do so." And he's not the sort to wink.

Sessions is not an alarmist, but he is inclined to alert the country to what he regards as growing dangers. A month ago, he focused on "national injunctions," which allow a local federal district judge to hand down rulings that affect the entire nation. The most egregious example occurred in Chicago, where a single judge ruled the federal government couldn't halt grants to sanctuary cities or states anywhere in America.

In a speech in Washington, Sessions talked about this problem. He didn't mince words. "In truth, this is a

question of raw power,” he said. Sessions was mistaken if he was expecting press coverage. He got practically none.

Maybe it was his speaking partly in legalese that discouraged the press. “Today, in effect, single district court judges are going beyond proper adjudicative bounds and making themselves super-legislators for the entire United States,” he said. “That means that each of 600 federal district judges . . . can enjoin a law or regulation throughout the country—regardless of whether the other 599 disagree.”

This is a new phenomenon unheard of until the 1960s and its use is exploding. That’s because it’s a way to target President Trump. All that’s needed is one “resistance judge,” and a Trump initiative can be blocked. Anti-Trump judges are easy to find, especially in West Coast states and Hawaii.

“It’s really a dangerous trend,” Sessions said on Hugh Hewitt’s radio show. President Obama was hit 10 times with these sweeping injunctions. “We’re now at 22,” he said, in Trump’s first year. “Sometimes I think [judges] simply want to teach President Trump a lesson, to micromanage his business and make sure they have discovery and lawsuits, and they can pry into everything that was done,” Sessions told Hewitt.

Sessions is willing to pursue a cause. And he has the authority to do exactly that. Unlike former Secretary of State Rex Tillerson, he’s not obligated to represent the president and his views and to be diplomatic. The attorney general can act on his own without asking for Trump’s permission or representing his thinking. It’s another reason why Tillerson was fired and Sessions hasn’t been.

Sessions doesn’t balk at feuding with friends. When the Senate Judiciary Committee took up a bill to reduce prison sentences, he complained to Sen. Grassley, the chairman. He said the bill would apply to “a highly dangerous class of criminals, including repeat dangerous drug traffickers and those who use firearms, and would apply retroactively to many dangerous felons, regardless of citizenship or immigration status.”

Grassley said he was “really irritated” because he had been a strong defender of Sessions, especially when Trump wanted to fire him. Referring to the letter, “I don’t think that’s something somebody should do to friends,” Grassley said.

Siding with Sessions, Senator Tom Cotton of Arkansas said, “I call it the jailbreak bill.” Cotton has been a close adviser to Sessions since he was a House member in 2013 and 2014. After sweeping immigration reform legislation passed the Senate—it would have let illegal immigrants become citizens—Cotton worked with then-senator Sessions to kill it in the House.

Meanwhile, Sessions has won over Mark Meadows,

the head of the House Freedom Caucus. Meadows and Jim Jordan, the group’s former chairman, called last winter for Sessions to step down as AG, blaming him for not controlling the FBI’s probe of the Trump campaign. Meadows is no longer calling for Sessions’s ouster and has kind words for his record at the Justice Department.

Edwin Meese is Jeff Sessions’s favorite attorney general. You shouldn’t be surprised. The two men are quite alike, professionally anyway. Meese was a California pal of Ronald Reagan, came with him to Washington, and served as his AG from 1985 to 1988. Meese was never an establishment figure nor a Washington type who hob-



Trump with Sessions in happier times, May 15, 2017

nobbed with lobbyists, the press, and social hangers-on. Neither is Sessions.

Besides their conservatism, what links them might be called a fighting spirit. Meese was a champion of the rule of law and enemy of judicial overreach, the tendency of judges to act like legislators. And he didn’t care what the media, academic experts, or bar association liberals said about him or his causes. Again, Sessions is a match.

Even personally, Meese and Sessions are alike—kind but serious men who find lots of unfriendly faces in their paths. This is the fate of conservative attorney generals. Sticking to the limits of the law can be unpopular. Ignoring the limits is often lauded.

There’s one big difference between the two—their relationship with their president. Meese and Reagan were close friends. If Reagan ever said an unkind word in public about Meese, I don’t recall it. If Trump ever said a kind word about Sessions, he didn’t utter it recently.

That Sessions has succeeded in this hostile environment is what makes his tenure as attorney general so remarkable and admirable. ♦

The Trial That Didn't Happen

Did Robert E. Lee commit treason?

BY ALLEN C. GUELZO

Treason is defined by the Constitution in Article 3, section three, as consisting in *levying War* against the United States or in *adhering to their Enemies, giving them Aid and Comfort*. Stark as that prescription is, fewer than 30 people have been tried for treason by the federal courts. Two of these—Philip Wigle and John Mitchell—were convicted for their role in the 1794 Whiskey Rebellion but then pardoned by President George Washington. Aaron Burr was tried for treason after a failed conspiracy to set up his own political empire in the Mississippi Valley, but he eluded conviction because, as Chief Justice John Marshall reasoned, “war must actually be levied against the United States.” Burr’s plot hadn’t become more than a plot, and since “conspiracy [to levy war] is not treason,” Burr walked free.

But surely the oddest treason trial is one which never took place, that of Robert E. Lee. Surely, if anyone could be said to have levied war against the United States, it must have been the man who for four years inflicted one embarrassing defeat after another on United States troops during the Civil War and almost single-handedly kept the Southern Confederacy alive until its final expiry in 1865. What aggravates Lee’s offense is his pre-war career of over 30 years as a U.S. Army officer and the offer of command of the U.S. Army made to him at the

outbreak of the Civil War in 1861, which he refused. “What has General Robert Lee done to deserve mercy or forbearance from the people and the authorities of the North?” the *Boston Daily Advertiser* shrilly demanded after Lee surrendered his dwindling, scarecrow band of rebels at Appomattox Court House on April 9, 1865. Lee was “the bloodiest and guiltiest traitor in all the South,” and Congressman George Julian foamed at the outrage of allowing “old General Lee” to roam “up and down the hills and valleys of Virginia,” free and unarrested.

But roam he did, because when Lee surrendered, he secured from Union General-in-Chief Ulysses S. Grant a “solemn parole of honor” that protected Lee and his army “from molestation so long as they conformed to its condition.” Grant had been eager to avoid any further bloodbaths, and granting the paroles was, by his estimate, the easiest way to induce Lee’s surrender.

That was until five days later, when President Abraham Lincoln was assassinated at Ford’s Theatre. At once, the new president, Andrew Johnson, and his attorney general, James Speed, decided that Grant “had no authority” to offer anything like a pardon to Lee. The Appomattox paroles were “a mere military arrangement and can have no influence upon civil rights or the status of the persons interested,” in the words of John C. Underwood. And on June 2, Underwood, the sole functioning federal district judge in Virginia, impaneled a grand jury in Norfolk (which had been occupied by Union forces since 1862) that issued an indictment for treason involving Lee, his two sons (both Confederate generals), and 34 other high-ranking Confederates. Underwood, a Unionist Virginian who had



Lee and Grant in Appomattox

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ALL IMAGES: LIBRARY OF CONGRESS

suffered personally at Confederate hands, was in deadly earnest: Lee “did maliciously and traitorously . . . ordain and carry on war against the United States of America.”

Lee took Underwood’s threat just as seriously. On June 13, he appealed to Grant, and Grant in turn wrote to Secretary of War Edwin Stanton to insist that “the officers and men paroled at Appomattox C.H. . . cannot be tried for treason so long as they observe the terms of their parole.” But neither Stanton nor Johnson were moved, and so Grant confronted Johnson directly in a cabinet meeting. “Mr. Johnson spoke of Lee and wanted to know why any military commander had a right to protect an arch-traitor from the laws.”

Grant, who “was angry at this,” heatedly explained to Johnson that he, as president, “might do as he pleased about civil rights, confiscation of property, and so on . . . but a general commanding troops has certain responsibilities and duties and power, which are supreme.” That included a parole carrying immunity from prosecution. Besides, if he had not given such a parole, “Lee would never have surrendered, and we should have lost many lives in destroying him.” And then came the stinger: “I should have resigned the command of the army rather than have carried out any order directing me to arrest Lee or any of his commanders who obeyed the laws.”

Grant was not the only one unlikely to cooperate with Johnson and Underwood. Abraham Lincoln had installed his former Treasury secretary, Salmon P. Chase, as chief justice of the Supreme Court in 1864, partly to remove him as a rival for the presidency and partly to ensure that the administration’s emancipation policies during the war would get a friendly hearing from a devout antislavery man like Chase if challenges erupted after the war ended.

Chase, however, had agendas of his own. If he could not usurp Lincoln as president, he could certainly magnify his office as chief justice. The Supreme Court and the federal judiciary as a whole had played a muted role in the conduct of the war, despite their unhappiness with Lincoln’s suspension of the writ of habeas corpus and the use of military commissions to try civilians. As soon as the shooting

stopped, Chase and the High Court moved to reassert themselves, and the most dramatic example of that would come in the case of *Ex parte Milligan*, which struck down the legitimacy of the military commissions.

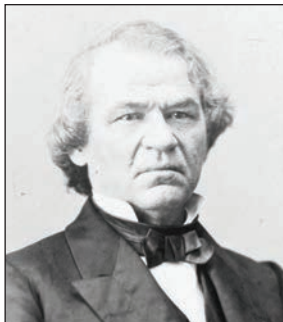
Not that this persuaded Andrew Johnson or Congress to suspend the use of military commissions—but it meant that Chase would refuse to participate in his auxiliary role as a federal circuit judge so long as military commissions were operating anywhere within a given district. “While military authority was supreme in the South,” Chase explained, “no Justice of the Supreme Court could properly hold a Court there.” And by tradition, Chase’s circuit responsibilities as chief justice embraced Virginia and North Carolina. Without Chase’s participation in a capital case, Judge Underwood would have to try Lee’s treason case by himself, and that would produce a verdict of, at best, dubious legality.

As it was, Chase did not have a particularly high opinion of Underwood’s competence as a judge. “The ‘Anxious’ man,” Chase remarked drily, “can have a trial before Judge Underwood” any time he wants. But “the Court will be a quasi-military court,” and Chase would have nothing to do with it.

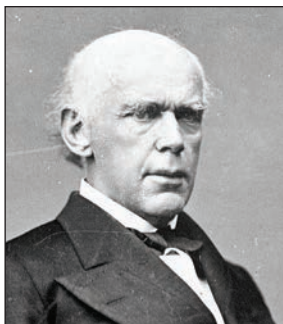
Whether Lee or Underwood realized it, there were also some serious constitutional and legal obstacles in the path of a conviction—or even a trial—for treason. For one thing, the Constitution’s definition of treason is really a very narrow one, and much would dangle on the exact meaning of “levying war.”

Abraham Lincoln had insisted from the beginning that since war is a condition that exists only between two sovereign nations, and since the Confederacy was in his view only an insurrection, no actual war legally existed between the North and the South. (The United States, for instance, never declared war against the Confederacy.) So it was not quite clear that Lee could be, by Lincoln’s definition, guilty of levying war.

Lee himself was quite capable of playing on other Constitutional ambiguities, especially concerning citizenship. Nowhere in the Constitution, as it was written in 1787, is the concept of citizenship actually defined. In the five places where it refers to citizenship, it speaks of citizens



From top: Andrew Johnson, U.S. Grant, Salmon P. Chase, and John C. Underwood



of the states *and* citizens of the United States. But no effort to sort out the relationship between the two is apparent, leaving the strange sense that Americans possessed a kind of dual citizenship, in their “native State” (as Lee called it) and in the Union.

Lee, curiously, had never put much faith in Southern appeals to state sovereignty to justify secession from the Union. But the obligations he owed Virginia as a citizen were another matter. In “my view,” Lee reasoned, “the action of the State, in withdrawing itself from the government of the United States,” required its citizens to act with it. Whether that withdrawal was right or wrong was irrelevant. “The act of Virginia, in withdrawing herself from the United States, carried me along as a citizen of Virginia” because “her laws and her acts were binding on me.”

In the event, Lee conceded, the Civil War had exploded that theory by sheer force, and the 14th Amendment would explode it by law in 1868. But in 1861, Lee added, neither

on any jury, I think, would say that Lee was almost equal to Washington, and was the noblest man in the State.”

On June 12, 1865, Judge Underwood was called to Washington for consultations, which effectively sent the Lee indictment to the back burner. The Johnson administration’s vengeful eye turned instead to Confederate president Jefferson Davis, who had no parole umbrella to protect him and whom Underwood’s grand jury indicted for treason on May 8, 1866. Once again, however, Chief Justice Chase balked while federal military commissions were still operating in Virginia, and no trial date was set until November 1867.

By that time, Chase and Andrew Johnson were both becoming involved in what would mushroom into Johnson’s impeachment trial. Johnson survived impeachment, but only barely, and almost as a gesture of contempt for his tormentors in Congress, he issued “a full pardon and

amnesty for the offense of treason” to “all and to every person who directly or indirectly participated in the late insurrection or rebellion” on Christmas Day, 1868.

Still, none of this quite answers the original question: Did Robert E. Lee commit treason? Half a century after Appomattox, Union veterans were still denouncing Lee for “his dishonorable desertion to the enemies of his country.”

When Virginia proposed placing a bronze statue of Lee in the Capitol, unreconciled Northern veterans demanded, “How long would Congress tolerate a statue of [Benedict] Arnold in that Hall? Not a single day; and yet far better Benedict Arnold than Robert E. Lee.”

One has to say, purely on the merits, that Lee did indeed commit treason, if *levying war against the United States* and *giving aid and comfort to its enemies* are to have any meaning. But treason de facto does not always become treason de jure. The distance between the two can be measured by Lee’s own carefully honed distinction: Until the Civil War settled matters, there was a plausible vagueness in the Constitution about the loyalty owed by citizens of states and the Union. So long as it could be argued that Lee was functioning within the latitude of that vagueness, it would be extraordinarily difficult to persuade a civilian jury that he had committed treason de jure. Such a jury was never called into being, and without a trial by his peers, not even the most acute of historical observers is really free to pass judgment on the crime or the loyalty of Robert E. Lee. ♦



Federal troops in front of the Appomattox courthouse, April 1865

he nor any other individual Confederate could be called a traitor for having followed their state. “The State was responsible for the act, not the individual.”

Finally, there was a practical consideration that not even Judge Underwood could ignore. The Constitution requires that the *Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed*, and the Sixth Amendment adds that such a trial must take place *in the district wherein the crime shall have been committed*. Hence, any trial of Lee would have to take place in Virginia. While it had not been difficult to create a cooperative grand jury in Norfolk, the wording of the Sixth Amendment seemed to require that such a trial take place in Richmond, and there it would be a much more monumental task to find a civilian petit jury which would vote to convict Robert E. Lee.

Underwood certainly understood that this would be one of his most formidable obstacles. “Unless it is what might be called a packed jury,” Underwood complained, then, instead of convicting Lee, “ten or eleven out of the twelve

The End of Civilisation

New documentary series pushes back at 1969 classic. BY ANDREW FERGUSON

When she was a mere sprout of 14, Mary Beard tuned into the first episode of Sir Kenneth Clark's famous BBC documentary, *Civilisation*, and felt a "slight tingle."

"It had never struck me," she wrote last year, "that it might be possible to trace a history of European culture, as Clark was to do, in 13 parts, from the early middle ages to the 20th century."

Civilisation: A Personal View first aired on the BBC in 1969. Given the intellectual currents of the time, it was probably inevitable that in a few years Beard, on her way to becoming an accomplished classicist, would start to feel queasy. She became "decidedly uncomfortable with Clark's patrician self-confidence and the 'great man' approach to art history—one damn genius after the next—that ran through the series." Clark's depiction of "barbarians" sacking Rome made her especially uneasy. *Barbarians*? By the mid-1970s, people did not use such language in polite company.

To this day, however, she remains grateful to Clark, who died in 1983, and to the documentary that made him internationally famous. "*Civilisation* had opened my eyes, and those of many others; not only visually stunning, it had shown us that there was something in art and architecture that was worth talking, and arguing, about."

Civilisation became the most influential television documentary ever

made, and here we are, decades later, still talking and arguing, although the arguments about art and architecture tend to be pretty one-sided nowadays. You'll take the point when you watch—



Classicist Mary Beard beside a statue of Ramses II, in a scene from the new BBC series *Civilisations*, premiering on PBS this month

as you should—a brand-new nine-part documentary from the BBC called *Civilisations*. (Note the plural, signifying expertise, used much the way gourmets refer to "cheeses" instead of just cheese and woke scholars of ancient history refer to "multiple Christianities.") It debuts this week on PBS and grinds along into early July.

Beard is one of three "presenters" (or hosts) of the series, joining the historians Simon Schama and David Olusoga for a round-the-world, millennia-spanning tour of human hustle and bustle. The series has its faults of pacing and plotting, but it offers plenty of opportunities for Beard-like tingles, too. It could hardly be otherwise, given the technological advances of the last 50 years and a budget at least as lavish as Clark's. We swoop on camera-mounted drones from the jungles of Central America to the misty mountains of Japan and deep into the darkest caves of southern Spain. The art

and architecture are lovingly photographed, even when they're unlovely. And much of it is unexpected: The few minutes Schama spends in the Villa Barbaro, in an episode on landscape art, would be worth busting any budget for.

The producers say their show isn't a sequel to *Civilisation*, nor a continuation or reimagining of the original series. But the promotional material links it decisively to Clark's and admits his inspiration. The new program is best understood as a kind of delayed rebuttal, sometimes quite explicit, to Clark and his view of history. The association is all to the good, and to Clark's benefit, if it leads audiences back to civilization, and *Civilisation*, all 13 episodes of which are playing 24/7 at your neighborhood YouTube.

The original series wasn't Clark's idea. Already by the mid-sixties he loomed large in the cultural life of Great Britain, at the top of the heavily subsidized tangle of councils and commissions and boards of directors that hoped to keep high culture alive. Heir to a textile fortune—his parents, he said, were among "the idle rich," and although "many people were richer, there can have been few who were idler"—Clark received the inevitable Oxford degree and spent two years studying at the feet of the great art historian Bernard Berenson. By the time he reached 30, Clark had written a popular book on Gothic architecture and gotten himself appointed the youngest director in the history of the National Gallery. He was professionally ambidextrous:

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BBC VIA PBS

a discerning and readable art critic and an able arts administrator. During the Blitz he oversaw the removal of the gallery's collection to abandoned mines in Wales. He kept the gallery open anyway, bringing out a handful of paintings every month as a sort of encouraging treat for the public. With London's concert halls dark, he joined with the great pianist Myra Hess to stage regular noontime concerts that, over the next six years, drew hundreds of thousands of listeners to the gallery.

His work during the war brought him immense public good will as well as fame. Clark was a highbrow and a popularizer and thought the two callings were perfectly compatible. An example of his method was a book the gallery published called *100 Details from Pictures in the National Gallery*. Clark wanted to draw the attention of untutored viewers to specific elements in each work and place them alongside similar details from other works, with the aim of building up knowledge and interest piece by piece, element by element. Not surprisingly, he early on saw the potential of television in his work of evangelizing fine art to a wide public. "I cannot distinguish between thought and feeling," he wrote, "and I am convinced that a combination of words and music ... and movement can extend human experience in a way that words alone cannot do."

In the 1950s and '60s Clark made several black-and-white TV programs that, as one viewer said, were almost unbearably awkward to watch. (A wonderful BBC documentary on Clark a few years ago confirmed this assessment in the cruelest way possible, by showing clips.) He wasn't a natural TV star, but he was an accomplished lecturer, a brilliant stylist, and an unrivaled historian of art. When, in 1966, the BBC decided to produce a series on the history of European culture, Clark was the unanimous choice for presenter.

The impetus for the series was color television, then practically unknown

to British households. In the United States—or so it was thought by professionals in the U.K.—experiments in color-TV programming had been disastrous, overwhelming the screen with ill-chosen and lurid palettes. The job fell to the broadcaster and naturalist David Attenborough to introduce color to the BBC audience. He got the idea to film a survey of the greatest artworks of Europe, as a way of bringing color into British living rooms as tastefully and vividly (and cheaply) as possible.

Attenborough and his colleagues took Clark to lunch. In passing, Atten-



Art historian Kenneth Clark, with Notre-Dame Cathedral in the background, in the opening moments of his 1969 BBC series *Civilisation: A Personal View*

borough dropped the word "civilization," and Clark, by his own account, fell into a reverie. "In a very few minutes, while the lunch of persuasion went cheerfully on around me, I had thought of a way in which the subject could be treated, and from that first plan I departed very little." Clark wrote the script over the next year while two experienced documentary directors were signed up. Filming began in August 1967 and ended, after an extended break, in May the following year. The budget was quickly busted, owing in part to Attenborough's decision to shoot the show in 35 mm film rather than the more conventional (for TV) 16 mm. There was no stinting on travel either. By the time they were through Clark and crew had visited

118 museums and 117 other locations in 11 countries.

It is hard to imagine, at this remove and with the conventions of documentary TV so well established, how strange *Civilisation* must have seemed 50 years ago. Color was just the first of the technological innovations, and the range of subjects and locales was unheard of. No one had seen a single presenter so dominate a nonfiction program of such length as Clark did. Unprecedented too were the long stretches in which Clark disappeared, leaving the camera to move tenderly over the surface of something beautiful. Music came and went like a recurring character. The narration, full of anecdote and grand pronouncements, was pitched at the highest level, without condescension or pedantry. It was television of an intensified kind, meant to seduce a mass audience.

The success or failure of *Civilisation* rested on Clark himself. Later, after the show's huge popularity inspired publishers to expand his scripts in book form, Clark agreed only reluctantly. (The offer of a generous cut of the profits weakened his misgivings.) As a master stylist he was too aware of the difference between spoken narration and prose that is meant to be read. He was wrong and the

publishers were right: The book has served as a model for the fat knockoffs that are now indispensable to museum and TV extravaganzas. Clark's ability to strip an anecdote to its essentials survives on the page, as does his ability to sketch even obscure characters with a few skillful strokes. The offhand humor and ironic asides carry over: "... the Oxford which welcomed Erasmus contained a few (not very many) pious and enlightened men." And so does the (half-serious) eccentricity of some of his opinions: "In the nineteenth century people used to think of the invention of printing as the lynchpin in the history of civilisation. ... On balance, I suppose that printing has done more good than harm, and early presses ... do give the impression of instruments

of civilisation. Perhaps one's doubts are due to a later development of the craft."

About that word *civilization*, the mere utterance of which set Clark off on his great televised adventure. He confronts it in the first episode's opening moments, as he stands on the banks of the Seine with Notre-Dame Cathedral rising up behind him. "What is civilization?" he asks us. Then, amazingly—this is, after all, the title of his TV show—he shrugs! "I don't know," he says. It is a shrug at once amused, modest, and perhaps genuinely baffled. "I can't define it in abstract terms. But I think I can recognize it when I see it." He turns to look over his shoulder at the cathedral. "And I'm looking at it now."

Clark was endowed with the traditional English distaste for abstraction and preference for the particular. He is more inclined to show than tell. But a sense of civilization's meaning, by his lights, forms soon enough. Throughout the programs certain words come up over and over: *enlarge*, *deepen*, *extend*, *broaden*, *expand*, and above all, *life-enhancing*. An act or piece of art that is life-enhancing—that allows us to have life, and to have it more abundantly—is civilized; one that isn't isn't. The word is not even a measure of craftsmanship or artistry. In the first episode Clark compares the ornamental prow of a Viking ship, showing a fearsome animal head, with the head of a once-celebrated sculpture from antiquity known as the Apollo Belvedere. The prow is "a powerful work of art," he acknowledges, and "more moving to most of us" than the Apollo.

Each expresses a cultural ideal. The prow emerged from "an image of fear and darkness" while the Apollo, the product of "a higher stage of civilization," emerged from an ideal of harmony and perfection, justice and reason and beauty held in equilibrium. This is the civilizing ideal that Western Europe inherited from Greece and Rome. (Both civilizations, needless to add, were responsible for numberless acts of barbarism themselves.) The Greco-Roman ideal, he says, was "without doubt the most extraordinary creation in the whole of history." It was nearly lost with

the sacking of Rome—by barbarians, did he mention?—in the 5th century and then barely survived the advance of Islam in the 8th. It lay dormant, tended by monks, until the millennium, when it began to manifest itself in a variety of ways in Europe.

That variety is the subject of the story Clark tells over 13 episodes. It comes to us through the achievements of individuals. As Beard says, his "great man" theory of history was even then at odds with the prevailing academic view, which saw (and sees) history as a process swept along by technology, economics, and shifts in the balance of brute power. Clark liked technology but said he didn't understand economics, and power dynamics interested him only as the conditions to which the great figures of civilization had to adapt themselves. He was a confessed "hero worshipper." "I believe in genius," he said. When an excellent biography of Clark was published a year ago—*Kenneth Clark: Life, Art, and 'Civilisation'* by James Stourton—nearly all reviewers mentioned this hoary defect. Clark's approach was "scandalous," "outrageous," and of course it was stuffed with dead white males—the fish kill of the modern university.

Now, it's hard to see how any survey of European high culture up to the First World War could include large numbers of nonwhite non-males, since it was produced almost exclusively by persons who had the temporary advantage of being white and male. In any case, lack of diversity is not a charge that can plausibly be made against a show that stars Charlemagne, Leonardo, St. Francis, Wordsworth, and dozens of other idiosyncratic Alphas. And Clark was too sophisticated, too honest to be a cheerleader. Alongside the glories he shows examples of what happens when civilization goes wrong. He declined to film at Versailles because, he said, its shameless ostentation made it "anti-civilization." Classicism, he knew, grows stale and boring through endless repetition; the mannerism of Renaissance painting became inhibiting rather than liberating and led later generations of artists into a dead end.

Clark was acutely aware of his pro-

gram's shortcomings and omissions. He regretted not dwelling more on philosophy and law, but he "could not think of any way of making them visually interesting." Goethe—one of the great men of history, as Clark would put it—makes only a brief appearance. The show is top-heavy with the Baroque and light on classicism. Incredibly, Spain scarcely rates a mention. "Other scholars could make mincemeat of [*Civilisation*] if they wished," Clark told an interviewer at the time.

Critics too often forget the subtitle of *Civilisation: A Personal View*. "Obviously," Clark wrote, "I could not include the ancient civilizations of Egypt, Syria, Greece and Rome, because to have done so would have meant another ten programmes, at least." Ditto India, China, and "the world of Islam." He reckoned that any misunderstanding was worth the risk. "I didn't suppose that anyone could be so obtuse as to think that I had forgotten about the great civilisations of the pre-Christian era and the East." Yet the charge against Clark hasn't been that he was forgetting non-Western cultures but that he was willfully dismissing them, committing an act of denigration.

The omission did not bother viewers, whose number was beyond Attentborough's and Clark's dreams. The head of the BBC exulted to friends, "What a relief to be standing in gold," which seems like a very un-BBC thing to say. The reaction was even more enthusiastic in the United States, where the recently formed Public Broadcasting Service used the series to establish an audience and its own credibility. Eventually *Civilisation* was translated and televised around the world—even in offended Spain. Clark's biographer Stourton tells us that curators saw a surge in museum attendance after the shows aired; there was a similar spike in tourism at the historical sites Clark had filmed. The book that Clark was reluctant to publish sold more than a million copies in hardcover. And TV documentaries were never the same. On the heels of *Civilisation* came an entire genre of personally hosted (called "authored" in the trade) nonfiction shows: Jacob Bronowski's *The Ascent of Man*, *Cosmos* by Carl Sagan and later Neil deGrasse

Tyson, and Attenborough's own *Life on Earth*. The influence extends to the present day. The films of Michael Moore can be traced, stylistically, to the breakthroughs of *Civilisation*—surely a crime worse than ethnocentrism.

Mary Beard is still irked about Clark's insult to the barbarians. In a companion book to the new series, she tries to slay him with quotation marks. "One of [civilization's] most powerful weapons has always been 'barbarity,'" she writes:

'We' know that 'we' are civilised by contrasting ourselves with those we deem to be uncivilised. ... The inconvenient truth, of course, is that so-called 'barbarians' may be no more than those with a different view from ourselves of what it is to be civilised, and of what matters in human culture. In the end, one person's barbarity is another person's civilisation.

This relativism—a term that Beard and her costars would reject as right-wing cliché—is the motive force behind the series. A variety of academics, plus a narrator, are brought in to reinforce the presenters in their judgment that it is wrong to make judgments. The narrative style itself underscores the point. The story Clark wanted to tell was relatively straightforward—one critic cleverly compared *Civilisation* to a relay race, with one great man passing the baton to another. *Civilisations*, by contrast, does a great deal of jumping about, forward and backward and sideways, not merely in geography and chronology but in the sequence of ideas. It's as if (to continue the metaphor) one of the relay runners suddenly started hopping in reverse while another took off across the infield and a third stopped for a swig of Gatorade, and everyone forgets who has the baton.

But it always gets picked up, and then somebody pokes us in the ribs with it. In the second episode, we are taken to Tabasco state in Mexico. We are asked to assess a small, ancient Olmec figurine, called the "Wrestler." What was it for?

we are led to ask. Where did its stylistic peculiarities come from? We don't know; scholars don't know. It's a mystery. Thus, says our narrator, we need to ask further: "Is this object mysterious because of the way it looks or the way we have been taught to look at it?"

The answer is: We've been taught to look at it that way. The ancient figurine, it transpires, is probably a forgery. This sort of question-and-answer combo recurs throughout *Civilisations*. It has a dual purpose: It's meant first to rattle our confidence in our objective judgment—hey, that figurine is pretty!—



Historian Simon Schama in Petra, Jordan, for *Civilisations*

and then to turn our attention back on ourselves to discover the cultural conditioning that has manipulated us into the illusion that our judgments are objective—that we have good reason to think the figurine is pretty. "Different eyes behold different things," we are told. Then we're off to Thebes to see the Colossi of Memnon, and then to the vast field in which a Chinese emperor buried thousands of terracotta warrior figures to defend him in the afterlife. The images are stunning, worth every moment a viewer can devote to them, even as the narrator's voice goes on and on, saying things you might hear from your roommate when he stumbles back to the dorm at 3 A.M., "How we look changes what we see."

To the extent *Civilisations* treats particular pieces of art, it dwells on their function—to what purposes were they put? Mostly, it turns out, art was about projecting and protecting the power of

an elite. "The dominance of a particular type of aesthetic vision in high fine art in the modern West," we hear, "is an expression of a particular kind of power"—the power of imperialism and colonialism, of the strong (the West) over the snookered (everyone else). In the hands of our narrators, art is reduced to an instrument of oppression. If you are uncomfortable with this approach—seeing the glories of human creativity reduced to tools for class warfare—too bad. Like many academic theories it is impossible to disprove. "No vase painter [in ancient Greece] sat down and said, 'I'm going to reinforce social norms by painting a picture,'" says one expert from UC Berkeley. "But that is maybe the unintended consequence." Actual vase painters from ancient Greece were not available for comment.

There are brief respites. Schama's episode on landscapes is downright sequential, almost Clark-like, and full of observations that have nothing to do with politics. He begins with Ansel Adams and then turns back to the earliest days of Chinese landscape painting. From here he goes to the mesmerizing patterns of Islamic carpets, which served as substitutes for landscapes owing to Islam's ban on pictorial art. From the gardens of the Villa Barbaro we move north for an explication of the meaning of windmills in Dutch painting. (They have more to do with God than politics.) Across the channel to Britain and the miracles of Constable and Turner, and then across the Atlantic to Thomas Cole and Albert Bierstadt in the American West, where we are led back to Adams and Yosemite.

It's a pleasing arc and a story beautifully told, a taste of what *Civilisations* might have been without the intellectual browbeating. But then Schama closes on the work of the contemporary photographer Richard Mischke. We are meant to see Mischke as Adams's worthy successor. In fact he's a misanthrope. His works are unfailingly stark, gleaming images of human failure: flooded trailer parks, stacks

of rusted cars in junkyards, and the scorched earth of forest fires—but, Misrach reminds us, he only photographs the aftermath of *manmade* fires, intentional acts of malice or stupidity.

But this too is kind of Clark-like—a catalogue of glorious creations followed by a vision of an art form in an advanced state of spiritual exhaustion. The difference is that the decline of an art form saddened Clark. Each of the episodes of *Civilisations* that I've seen ends with a celebratory profile of a contemporary artist. Invariably their work suffers in comparison with what's gone before—how could it not?—but the moments serve a summary purpose.

The episode called “How Do We Look?” closes with Kehinde Wiley, the artist who recently completed the official presidential portrait of Barack Obama. The narrator describes Wiley as a practitioner of “the modern art of the body,” which “draws its power” from “challenging the tradition of classical art.” Of course he lives in Brooklyn but “he has traveled all over the world to explore the legacy of colonialism and the different ways we see.” Suddenly we see him in the Metropolitan Museum of Art, moving from masterpiece to masterpiece. A tinny ensemble plays Vivaldi—a fusty reminder of the distant past. “I love the history of art,” he tells the camera. “I love looking at these beautiful images. But I also recognize that there's something quite sinister about their past.”

“Sinister” sounds judgmental, doesn't it? So judgmental indeed that I don't think even Clark used it at all in his *Civilisation*. But it nicely summarizes the attitude toward the West that viewers of the new *Civilisations* will find unavoidable, even if they're confident enough to find it unpersuasive.

Next to *life-enhancing*, the most important word in Clark's account of civilization was *confidence*. Several things came together to make a civilization, Clark said: a measure of material prosperity, a sense of history, a range of vision, and a feeling of permanence, of being situated in a particular moment between past and future, that makes it worthwhile

to construct things meant to last.

“But far more,” he said, “it requires confidence—confidence in the society in which one lives, belief in its philosophy, belief in its laws, confidence in one's own mental powers.” His program was an effort to persuade his audience that confidence in their inherited civilization was well-earned.

In the closing moments of the final episode of *Civilisation*, Clark intended to strike a note of optimism. “When I look at the world about me in the light of these programs, I don't at all feel as though we are entering on a new period of barbarism,” he said. He shows us the campus of the then-new University

of East Anglia. Apple-cheeked college students pop in and out of classrooms, labor over books—the baby boomers as Clark hoped they were in 1969. “These inheritors of all our catastrophes look cheerful enough. ... In fact, I should doubt if so many people have ever been as well-fed, as well-read, as bright-minded, as curious, and as critical as the young are today.”

Watching at home, we can assume, was the 14-year-old Mary Beard, all a-tingle and raring to go to college herself, where she could use her curiosity and reading and bright-mindedness to prove the great man and his theory wrong. ♦

BCA

Unseeing Paterno

Al Pacino plays Penn State's 'JoePa' in an HBO movie about the rape scandal. BY JONATHAN BRONITSKY

A memorable bumper sticker from my childhood: “If God isn't a Penn State fan, then why is the sky blue and white?” For me, growing up in central Pennsylvania, Penn State football was the universe while the team's head coach, Joe Paterno, was the center around which it rotated. His likeness appeared on coffee mugs and Halloween masks, TV-dinner trays and cereal boxes. Since 1987, “Peachy Paterno” has been one of the most beloved ice cream flavors produced by the University Creamery. “JoePa” was basically a member of our family.

Then, as an undergraduate in Happy Valley myself, I became part of his family—a family with more living alumni (over 645,000) than any other school in the nation. On the days the Nittany Lions take the field, State College—home of Penn State's main campus, a town with an official popu-

lation of around 42,000—becomes the third-largest city in Pennsylvania, with a temporary population of over 230,000, as more than 107,000 fans regularly pack Beaver Stadium and thousands of tailgaters gather in its shadow.

Before even figuring out the way to the dining hall, I learned the 11th Commandment: Thou shalt not speak ill of JoePa. I arrived in State College in 2002—52 years into Paterno's 61-year coaching career at Penn State, and the year before a 7-foot, 900-pound statue of him—literally an idol—was put up on the northeast side of Beaver Stadium. Any suggestions that Paterno should consider stepping down were met with vitriol. The facts that he was showing up at practice wearing mismatched shoes and hurting recruiting by failing to disclose his future plans were likewise summarily dismissed. *How dare you! Don't you know what JoePa has done for this university? He built the library. He quintupled the endowment, pushing it well into the billions. He transformed Penn State from a “cow college” into a world-class academic institution.*

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This defensive refrain was the same one issued after the Jerry Sandusky sexual-abuse scandal broke in 2011. And it's the one echoed in filmmaker Barry Levinson's *Paterno*.

The film marks Levinson's third collaboration as director with Al Pacino (including a previous HBO film in which the actor depicted Jack Kevoorkian). It's a great casting choice. Although Pacino's voice doesn't quite resemble Paterno's often-indecipherable mixture of nasal shrieks and coarse rumblings, he has the look down—with the aid of heavy makeup and, of course, a pair of the iconic, yellow-tinted Coke-bottle glasses—and delivers a deft performance, nailing the coach's quirky persona and mannerisms.

The movie portrays the chaotic two weeks in State College after Sandusky, Paterno's assistant coach for 30 years, was indicted on 52 counts of child molestation. The film follows Paterno, as well as Aaron Fisher ("Victim No. 1" in the case), Sara Ganim of the Harrisburg *Patriot-News* (whose reporting on this story earned her a Pulitzer), and two top members of Penn State's administration: athletic director Tim Curley and vice president Gary Schultz (who both pleaded guilty to misdemeanor child endangerment in 2017). Little screen time is dedicated to Sandusky and his victims. In the 10-minute opening sequence, we see the coach helplessly and claustrophobically enclosed within an MRI machine. Lying on his back, he stares upward—and begins to see images not of his creator but of himself, in flashbacks of a recent gridiron clash with the University of Illinois. With quick-action cuts of the sideline and the student section, combining real-life footage with reenactments, Levinson sets the stage for the impending collapse by depicting the scale and fervor of the Penn State football phenomenon.

That game against the Fighting Illini, played on October 29, 2011, was the one that made Paterno the winningest coach in Division I football history. It was also the last game in which he would serve as a coach. With five seconds left on the clock, a 42-yard field-goal attempt by Illinois bounced

off the right upright as time expired, giving Paterno in miraculous fashion his record 409th win. The coach wasn't soaked with a cold bucket of Gatorade and he wasn't carried triumphantly off the field; he had orchestrated the victory from the coaches box atop the west-side stands, having suffered shoulder and hip injuries from a sideline collision during a summer practice. In control yet distant—the ambiguous position that Paterno seemingly strategically assumed in relation to Sandusky throughout his career, as Levinson teases out.



Al Pacino as Joe Paterno

What most Penn State alumni associate with their alma mater is decency and tradition, both epitomized by the absence of names on the players' jerseys. Few serious college-football fans have forgotten what happened before the seven-point underdog Nittany Lions shocked the Miami Hurricanes in the 1987 Fiesta Bowl. While the Miami players exited their plane in Tempe, Arizona, dressed in combat fatigues, the Penn State players wore suits and ties. And it wasn't just a show. Paterno's "Grand Experiment" was to prove that academic and athletic excellence weren't mutually exclusive, that players winning national championships could concurrently earn high marks. Under Paterno's tenure, the graduation rate for football players was around 85 percent, often the highest in Division I.

Unscripted was not—and is not—Penn State's style. So to see an internal locker-room skirmish in *Paterno* is jarring. And to see the coach's grown

children depicted as scrambling to find crisis-management experts to help their father, even turning to Google for help, is both amusing and pitiable.

Stylistically, the movie evokes the working-class setting of central Pennsylvania: The use of a dark-blue wardrobe complements the ominous dark-gray skies glowering over a landscape dotted with forgotten mining operations. And the influence of the university is everywhere in evidence. Staff of the *Patriot-News*, who might be viewed as the oppositional figures, are often seen wearing colors that were for many of them undoubtedly those of the school from which they had graduated. (More than 334,000 alumni reside in Pennsylvania.) Indeed, the entire state appears to conspire against the inquirers and the dissenters. In the years before the scandal broke, Aaron Fisher spoke with a psychologist and a number of Pennsylvania state troopers, and testified to three separate grand juries. And despite a handful of district attorneys assuring Fisher that Sandusky would be swiftly brought to justice, no arrest was made for three years.

Benjamin Cook, who plays Fisher, has few speaking lines but skillfully conveys anguish and courage. The actors who play the Paternos come across as a close-knit middle-American family with boisterous and starkly authentic exchanges. Meanwhile, the Penn State administrators are one-dimensional and craven figures, quick to suppress or rationalize away incriminating information; they are often seen conspiring in groups of two or three. Not one of them is shown in the film demonstrating fortitude or moral insight.

Central to the film's investigation is whether the elderly Paterno, after his 61 years at Penn State, was treated unfairly. Following an emergency meeting of the Board of Trustees on November 9, 2011, Paterno was notified via a curt phone call that he had been fired, effective immediately. (He had stubbornly rebuffed advice to resign and shape his legacy as much as was still possible at that point.) The film seeks to complicate feelings by showing the octogenarian physically and somewhat

ATSUSHI NISHIJIMA / HBO

mentally decrepit—and indeed, he died of lung cancer just two months after being unceremoniously let go.

Paterno's excuse—which was basically also that of athletic director Curley and vice president Schultz—was that he had done exactly what was expected of him. “I had a job to do,” Pacino's Paterno says at one point. “I was working.” He is shown focusing on practice and scrutinizing films in his study while ignoring the pleas of his family to read the grand jury presentment that would eventually lead to Sandusky's conviction. When he finally gets around to looking at it while seated at his kitchen table, the graduate of Brown University whose family conversation regularly involves references to Greek and Roman classics asks, “What is sodomy?” This Paterno seems desperate to convince those around him—and perhaps himself—of his innocence.

Paterno illustrates the tragedy of passing the buck and the dissipation of responsibility within large institutions. Thus it is also a condemnation of those in power who ruthlessly and callously seek to protect their privileged status. Like a rotten onion, sickening layers are peeled away one at a time, disclosing the prior knowledge of key members of the university's administration and pushing the timeline of complicity back further and further—to 2001, 1998, the late 1980s. Then, shockingly, at the end of the film an individual who grew up in State College calls Ganim at the *Patriot-News* and attests that he informed Paterno as early as 1976 that he had been abused that year.

Until that point, Levinson treats Paterno with some empathy and leaves his degree of culpability vague. Yet given his elevated platform and the high standard of virtue he promoted and demanded, Joe Paterno, perhaps more than anyone else at Penn State, had a moral obligation to do more. “Educator,” “Coach,” and “Humanitarian” were the three words emblazoned on the wall behind Paterno's statue. *Penn State forever, Molder of men, Fight for her honor* were the lyrics the coach heard sung innumerable times during his decades in State College.

In 2011, the 96-foot-long “Inspiration” mural on East College Avenue and Hiester Street, comprised of notable Penn State figures, was modified: Its creator painted out Sandusky. The artist also removed a golden halo that been above Paterno's head. But he restored it a few years later, as bright and shining as it had been before.

Despite all that has transpired and been revealed about the Penn State abuse and its coverup, it is still not hard to find Paterno apologists (aka “Joe-Bots”) today. But the release of HBO's *Paterno*, fairly or unfairly, will likely make it harder for them to make their case. And, more deeply, the film should lead us to wonder about the extent to which the faith in idols that arises from heightened tribalism can blind us to dark and uncomfortable truths. In this situation, the tribalism involved obses-

sive devotion to one sports team's competition. Yet the lesson about hubris and myopia is just as apt in politics and other areas of human life.

Paterno is ultimately a painful exploration of our inclination toward normality, our tendency to push aside signs that disturb the psyche. Its message is even more poignant in the wake of the Harvey Weinstein *et-very-much-alia* scandal of sexual assaults, harassment, and impropriety. In the Penn State case, as in some of the recent sex revelations, there were individuals who did not come forward to say what they knew and others who did speak but were not believed. The act of bearing witness in such circumstances can come at a personal cost—sometimes a terrible one—but it is essential for our moral order. When silence prevails, corruption can spread unchecked. ♦

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Forceful Faces

The power and tense stillness of Cézanne's portraits.

BY JOSEPH R. PHELAN

Paul Cézanne (1839-1906) is best known for his luminous landscapes of the valleys and majestic mountains of his native Provence and for his elaborate still lifes of apples, pears, and pottery balanced on sumptuous tablecloths. He imbued these paintings with a monumental permanence and coherence that paved the way for the modern art of Matisse and Picasso. Less well known: Cézanne also painted portraits, 160 of them. Though radically unconventional by the standards of the day, these are among his finest works. The first full-scale exhibition of these portraits, after stops in Paris and London, is on view at the National Gallery of Art in Washington. In the catalogue

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Cézanne Portraits
National Gallery of Art
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accompanying the exhibition, the curators argue that portraiture is the most personal, and therefore most human, aspect of Cézanne's work.

The extent and depth of Cézanne's achievement in portraiture is revealed through nearly 60 examples. Walking through the galleries we meet the people of his life over five decades, seeing them through his eyes: his father and relatives, his wife, their son, a few notable supporters, and the working-class men and women of his homeland.

As we enter the first gallery, a dapper, brooding young man glares out at us: The earliest of Cézanne's self-portraits in the exhibition dates to the early 1860s. While that painting was

made with a brush, other early portraits—like those of his mother, sister, and uncle—were painted with a palette knife. He later described this unorthodox technique, inspired by Gustave Courbet and Édouard Manet, as his *manière couillarde* (“ballsy manner”). As Courbet and Manet did, Cézanne ensured that his painterly performance was going to be noticed as much as his subject.

In the exhibition’s earliest true masterpiece, the National Gallery’s own *The Artist’s Father* (1866), Cézanne comes to terms with his republican paterfamilias Louis-Auguste, a self-made businessman and successful banker who wanted his son to become a lawyer. At first blush this monumental tribute to the man whose grudging financial support made the painter’s artistic career possible is properly respectful. His father sits in his easy chair, relaxing at home in his slippers and cap and reading the paper.

Yet as is almost always the case with Cézanne, the picture is as much about him as his father. One of his bold still lifes hangs on the wall right above his father’s head; to the right there is a view into his studio; and in his father’s hands, he places not the conservative newspaper *L’Événement* would have read but the left wing *L’Événement*, for which his boyhood friend the novelist Émile Zola penned a spirited and controversial defense of the new painting.

Cézanne was the most classically educated painter of his generation, so fluent in Latin and Greek that he would translate Virgil or Lucretius on the trains to and from Paris. Yet this shy and insecure young man affected a boorish rustic manner in his personal demeanor during these visits. In a self-portrait from 1875, he’s a wild man—a solitary, uncouth, glaring peasant with greasy hair massed on either side of his head. During this period, Cézanne was painting outdoors side by side with the older impressionist Camille Pissarro. He learned how to capture the transient effects of light and atmosphere,



Above: Cézanne’s *The Artist’s Father, Reading ‘L’Événement’* (1866); below: *Madame Cézanne in a Red Armchair* (ca. 1877)



but Impressionism presented an especially difficult challenge for portraiture. How to shape a palpable human presence using the styles and techniques intended to record a continuous, ever-changing visual field?

In one solution from 1875, Cézanne celebrates the powerful volume and structure of his bald head—one of the most fortunate cases of early baldness in the history of art. The poet Rainer Maria Rilke was transfixed by this painting when he saw it in 1907, memorably writing that the head seemed “formed as though by hammering from within.” *Hammered from within* nicely characterizes the self-discipline that must have been at work for the artist to have produced the canvases to follow.

Cézanne had been living with his partner Hortense Fiquet since 1869. This liaison, which produced a beloved son Paul three years later, was also fortunate for his art. A dressmaker with a sharp eye for fashion, Hortense had an oval face that Cézanne loved to paint. She would become not only his wife (in 1886), but also his most frequent subject, painted more than two dozen times and sketched endlessly during their years together.

In what the curators describe as a milestone in the history of painting, *Madame Cézanne in a Red Armchair* (ca. 1877), Hortense wears a blue *robe de promenade* that she probably designed. The intimacy in this painting emerges not, as one might expect, from eye contact between sitter and viewer but from the brilliant color and responsive brushstrokes lavished on Hortense’s ensemble. There is a palpable delight in the way Cézanne paints the ribbons of her blouse and makes her skirt shimmer. Sitting on her own plush throne of a red armchair, Hortense is a daunting goddess. This is a noble tribute from one artist to another.

The exhibition also brings together four later canvases showing his wife in a red dress (1888-1890), made during what was apparently a rare period of stability in their relationship. The differences among these four paintings—in Hortense’s face, her hands, the shadows—reveal variations in Cézanne’s technique and approach to psychological depiction.

In *Boy in a Red Waistcoat* (1888-90),

TOP: NATIONAL GALLERY OF ART, WASHINGTON; BOTTOM: MUSEUM OF FINE ARTS, BOSTON

Cézanne offers another kind of homage, this time to the great tradition of Italian High Renaissance portraiture that he studied at the Louvre and also to the golden age of adolescence that had been the happiest period of his life. The painting shows a young man—this was one of the few times Cézanne used a professional model—standing with languid elegance, his weight shifted to one side and his hand on his tilted hip. The swagger of confidence shown by the boy's pose is in tension with the sweet, pensive look on his face. With the head of a child and the body of a man, the subject's presence is, in the words of one of the curators, "simultaneously elegant and awkward, vital and relaxed, physically imposing and contemplative, even melancholic." As in most of his finest portraits, Cézanne has largely displaced emotional expression from the conventional site of the face to the overall formal elements of color, shape, and composition.

In 1895, after decades of neglect or derision, Cézanne received his first solo exhibition and a highly sympathetic review from the critic Gustave Geffroy. In gratitude, Cézanne offered to paint his portrait. After three months of daily sittings in the critic's study, the meticulous perfectionist walked away from the project, writing to Geffroy that he was "unable to bring to a satisfactory conclusion the work that is beyond my powers." Nevertheless, what we see is one of the most marvelous portraits of the century, depicting the writer at his desk, a triangle of stability wedged between his books, which seem to be in motion on the shelves behind him and on the table in front.

During this decade and continuing to the end of his life, Cézanne turned to the local people of Aix-en-Provence for his subjects. He had a deep love of his region and for the moral virtues of its working people. *Woman with a Cafetière* is a formidable portrait of one of these formidable figures—the human equivalent of his beloved Mont Sainte-Victoire portrayed with an emphatic respect for her dignity and grandeur.

In striking contrast to the wild character of his early years, Cézanne's last self-portrait (1898-1900) shows a man

in his sixties, suffering from diabetes, a shadow of his former self. The *terribilità* of an old man has replaced the obstreperousness of youth. Some of the other works in the final rooms, such as *Old Woman with a Rosary*, may also be considered spiritual self-portraits. In two large portraits of his devoted gardener, Vallier, the sitter wears a visored cap, shadowing brooding eyes, eyes that suggest the reveries the painter might have observed in Rembrandt's self-portraits.

Cézanne rejected some of the traditional aims of portraiture. He refused to flatter. He wouldn't make men look important or women beautiful. He wanted to paint the authentic presence of somebody seen. He took immense

pains with these works, frequently making outrageous demands on the endurance of his sitters. In turn, these paintings require patience of us, and a kind of slow looking before they will unfold their magical designs. In a 1905 letter, Cézanne penned this credo: "I have always been grateful to the audience of intelligent art lovers who have sensed what I was trying to do. ... One does not replace the past, one only adds a new link." Without Cézanne's work as a guide and inspiration, Matisse's portrait of his wife and Picasso's of Gertrude Stein would be unthinkable. To our selfie-infatuated age, Cézanne's portraits may seem even more radical than when he painted them. ♦

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Tiger Cubs

At the Masters, the former great struggles against golfers who grew up watching him. BY TOM PERROTTA

Back in 2008, Tiger Woods was unstoppable. His most astonishing golf victory came at the U.S. Open that year, at Torrey Pines in California, despite an injury that made his legs and left knee feel "like they had been hit with a thousand hammers." On the final hole, down by a stroke, Woods hit a putt in a difficult spot for a birdie, tying Rocco Mediate and forcing an 18-hole playoff the next day. Woods pumped his fist, but he had work to do. On Monday, he and Mediate tied for 18 more holes. Woods looked injured and wounded, yet somehow kept swinging. Then, in the first sudden-death playoff hole, Mediate missed, giving Woods a chance to win with a par. He delivered, giving him his 14th major title at age 32. "It's probably the greatest tournament I've ever had," he said at the time. He was right—and everyone thought he would

win again and again. Jack Nicklaus, the famous champion of a record 18 majors, didn't win 14 majors until he was 35. Woods, no doubt, would break that record, along with everything else.

I was reminded of all this while reading the excellent new book *Tiger Woods*, by Jeff Benedict and Armen Keteyian (the vivid thousand-hammers quotation about Woods's legs belongs to them). The book, rich and clean, couldn't have been published at a better time, now that Woods is trying—after years of struggle and injuries and little golf—just to stay alive in a tournament, never mind win it. Improbably, he hasn't won a major since that dramatic victory in 2008. If that was his peak, what followed was a steady and sometimes steep decline in both his professional and personal life. He ruined his marriage with affairs. He struggled with painkillers. He injured his left Achilles tendon, had back spasms, and had back surgeries four times in three years. He couldn't cure all that, and it eventually knocked him off the tour. Last year he had a DUI

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arrest that also involved painkillers and sleep drugs; in his booking photo, he looks disheveled and tired. During all this time, Woods could barely play.

This year's Masters tournament, played from April 5 to 8, was Woods's first major since 2015. The most one can say is: Woods is back now—or for now, and who knows for how long. He achieved at least one goal at the tournament: He competed and everyone either watched or kept track of his performance online.

It is remarkable that his arrival was itself seen as an achievement. The man who was once expected to surpass Nicklaus hasn't come close to winning a major in 10 years, a decade that no one would have predicted. For a while, a tie with Nicklaus seemed possible. People used to wonder who would win more titles, Woods or tennis star Roger Federer, who has since moved well ahead (he has won 20 major titles and was recently ranked No. 1 in the world at age 36). Now no one expects Woods to come even close to Nicklaus, and most golf fans have settled for just watching him, not knowing how much time is left. Despite the continued support of many admirers, at 42 he's not the old Tiger Woods anymore, and he likely never will be.

Woods started off the tournament with a shot way off target, into the crowd. On day two, he had a double bogey after he hit a shot into the trees. By the time play started on Saturday, there was little doubt that Woods was done in terms of winning. Yet everyone still wanted to watch him. The television ratings jumped, a big score for ESPN and CBS, especially since Woods survived to play over the weekend. His just being in the mix was enough, considering that CBS turned on its program after Woods was finished for the day—he shot even on the third day—and didn't immediately show his results. It wasn't pretty. Late at the 15th hole on Saturday, Woods hit a shot that bounced out of the green. He put his face down and shook his head, looking disgusted. He ended the hole with a bogey. Woods never capitalized on the five-shot holes, much to his disgust.

"I played the par five awful," he said. Woods was at four over par, with all his chances of winning gone. The last day was his best, finishing three under par to end the tournament at one over par.

Woods won the Masters four times in his career, but the last one was long ago, in 2005. He was thinner then, with a smaller build and a healthier body. He seemed in those days to be in control of all aspects of the game. One putt, from the corner of the green in a tight 2005 match, is among of the most memo-



Tiger Woods at the Masters, April 5

rable moments. He hit the ball slowly into the green and it began to curve and drop near the hole. Then, for a long moment, the ball stopped at the edge, with Woods leaning forward, as if he could fire a force from his body to push the ball in the hole. It fell. He pumped his fists. Then there's the most impressive Masters victory, in 1997. He finished 18 under par, a record that stood until Jordan Spieth tied it in 2015.

Victories and records like that one added to Woods's popularity, even though he often avoided the media and didn't have a reputation for friendliness. Despite all that went terribly, painfully wrong—much of it in full public view—with his life, love for Woods among fans seems strangely undiminished.

There's also a lot to be said about what Woods has done for other golfers. Seeing

what Woods was capable of, younger players grew up with new and feistier efforts to hit the ball deep and putt well. Sometimes they look and play much like Woods used to—as was apparent from seeing them at this Masters. Just watch Spieth, now 24, who won two major titles in 2015. Or Rory McIlroy, the 28-year-old who nearly hit a hole-in-one on Saturday as he moved into second place (he has four major titles in all) and then tied for first, at nine under par, by flicking a ball up high for an eagle (he eventually fell back). Patrick Reed, 27, in the first two days birdied every par-five hole and overall putted better than anyone. Rickie Fowler, a 29-year-old from California, essentially taught himself to play.

After Woods finished on Sunday, the rest of those men fought for the title with style and precision that would have made it a tough contest for Woods when he was at his best. There was an elegance to the competition, with Spieth making a charge from 5 under par all the way to 13 under. Fowler did even better, ending the day at 14 under par. But it was Reed, under pressure and trying to win his first major title, who held on through the end. On the 18th hole he ended the event with a two-putt finish that left him at 15 under par.

There's still a chance that Woods will, somehow, win another major title. In 1986, Nicklaus found himself in a somewhat similar spot. He was 46 years old, hadn't won a title since 1980, and trailed at the Masters. Then he made a miraculous comeback, inspired by an eagle and consistent shots throughout. When he won, he hugged his caddie—who was his son.

For Woods, there's time if he stays committed and, above all, healthy. This could be the beginning of a decent stretch, but winning a title won't be easy. Woods has inspired his opponents to make it that way—he was that good. The edge you see in them used to be seen only in Woods, to the point where he was expected to win every tournament he played. Now it's just a question of how long his body can last and if he can rise to outdo the golfers who learned so much from watching him. ♦

JAMIE SQUIRE / GETTY



Chappaquiddick Facts

The grim record of a Kennedy cover-up. BY JOHN PODHORETZ

The existence of *Chappaquiddick*, the new movie about the 1969 car accident from which Ted Kennedy walked away while his passenger Mary Jo Kopechne likely suffocated slowly inside his partly sunken Oldsmobile, is a miracle of a kind. The script by Taylor Allen and Andrew Logan was included on the 2015 Black List, the annual compendium of yet-to-be-sold screenplays of uncommon quality. Only a third of Black List titles ever make it to the big screen. And the fact that Allen and Logan's screenplay offered a cold-eyed view of a liberal icon gave everyone reason to think it would stay among the unfilmed.

And yet filmed it was—a strong, astringent piece of work, beautifully directed by John Curran and centering on a brilliantly understated performance by the Australian Jason Clarke. And released it has been—by a company called Entertainment Studios Motion Pictures, run by former stand-up comedian Byron Allen (no relation to Taylor Allen). “There are some very powerful people who tried to put pressure on me not to release this movie,” Byron Allen told reporters. “They went out of their way to try and influence me in a negative way. I made it very clear that I’m not about the right, I’m not about the left. I’m about the truth.”

The effort to strong-arm Allen in this way has a historical parallel. In 1987,

the journalist Leo Damore turned in to Random House his manuscript for *Senatorial Privilege*—an investigation of Chappaquiddick for which the publishing firm had paid a \$150,000 advance. The book was a reportorial masterpiece. Yet Random House rejected it on the outrageous grounds that it was somehow “libelous.” Later published by Regnery, it became a bestseller.

Damore's account isn't ideological. It is, rather, a meticulous, hour-by-hour rendering of the accident and what followed. Nor did screenwriters Allen and Logan come at the subject ideologically. They were attracted to it because they thought the tale fit nicely into the recent pop-culture appetite for controversial true-life crime stories; they were especially taken with *Foxcatcher*, the Steve Carell movie about the murder of an Olympic wrestler by a du Pont heir.

In their telling, *Chappaquiddick* is a story about how a powerful person worms his way out of trouble. It suggests Teddy went through several long, dark nights in which he struggled with his conscience, and it concludes with his disgraceful nationally televised speech in which he said his own conduct the night he let Kopechne die “make[s] no sense to me at all.” It evokes Damore's painstaking revelations of how the tentacles of the Kennedy network ensured Ted escaped with barely a wrist slap.

Clarke isn't the only standout here. Ed Helms, known almost exclusively as a wild comic talent, gives a beautifully subdued performance as Joe Gargan, the Kennedy cousin and

family fixer who found himself trying to rescue Kopechne from the Oldsmobile. And the comedian Jim Gaffigan matches him as Kennedy hanger-on Paul Markham, whose day job as the U.S. attorney for the district of Massachusetts didn't keep him from doing whatever he could to protect the holy family's surviving son and blessed name.

Chappaquiddick has one grave flaw. Teddy interacts repeatedly with his stroke-afflicted father Joseph (Bruce Dern), who speaks the word “alibi,” slaps him across the face, and in general makes it clear he loathes his boy. I hold no brief for Joseph Kennedy, one of the more repellent Americans of the 20th century, but there's no evidence any of this happened or that he was even compositus by the time of Chappaquiddick. The falsity of these scenes takes away from the devastatingly suggestive tone of the rest.

The Kennedy mythologizers are still out in force. The day the movie opened, the *New York Times* published an assault on it by the film historian Neal Gabler, who suggested it was beyond the pale because “by the end of his life ... the then white-maned senator had managed to transcend celebrity and emotional paralysis and become what he had long aspired to be: an indispensable legislator.” Kennedy's indispensability is a matter of opinion. Mary Jo Kopechne's dispensability for Edward M. Kennedy was not. He lived for four decades and five weeks after the night he drove off Dike Bridge. Kopechne died in agony in mere hours and probably could have been saved if he'd cared enough to give a thought to her saving. She was 28 years old. Gabler claims the accident “haunted” Ted, as though that is somehow exculpatory. For the Kennedys, there will always be those progressives in thrall to a bizarre dynastic delusion and ready to proffer their excuses in a staggeringly inappropriate tone of moral offense. For them, it is an offense that *Chappaquiddick* exists. For those who long ago threw out their original-cast album of *Camelot*, the existence of *Chappaquiddick* is a welcome moment of American cultural sanity. ♦



Jason Clarke as Teddy K.

Chappaquiddick
Directed by John Curran



John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD's movie critic.

ENTERTAINMENT STUDIOS MOTION PICTURES

“Team Facebook looked pleased because Hatch’s question, like those from many of the senator’s peers, showed a lack of basic understanding about how Facebook operates.”

—CNET, April 11, 2018

PARODY

Facebook, Social Media Privacy, and the Use and Abuse of Data
JOINT FULL COMMITTEE HEARING
Senate Committee on the Judiciary
Senate Committee on Commerce, Science, and Transportation

TRANSCRIPT (cont’d):

or is it pronounced “jif,” like the peanut butter?

MR. ZUCKERBERG: I prefer “gif” as in “gift,” but you can pronounce it whichever way you like, Senator.

SEN. HATCH: Well, whatever way it’s supposed to be pronounced, the gif does not stop. It just keeps on going and going. My question to you, Mr. Zuckerberg, is if you scroll down the page and the gif is gone, is it actually still going on even though I don’t see it? Because sometimes I’ll go back up and take a little peek, and I am certain it’s still moving!

MR. ZUCKERBERG: If you click on the gif itself, Senator, that should stop the looping.

SEN. HATCH: I really hope so, young man. I really hope so.

SEN. GRASSLEY: Thank you, Senator. Mr. Zuckerberg, my problem with your Facebook is the homepage. If we can show it on the screen. You see? Lots of entertainment news, no family posts, and useless categories like “Everybody loves a list!” “Top 8,” and “Free Lunch.” What on God’s earth is going on here?

MR. ZUCKERBERG: I’m sorry, Senator, but we seem to be looking at the homepage for MySpace.

SEN. GRASSLEY: Fine, have it your way. Let me move on to those annoying ads. I’m bombarded by a ton of them: Xarelto, Victoza, Harvoni, Eliquis, Tresiba, Neulasta, Trintellix, Contrave—

SEN. LEAHY: Excuse me, Mr. Chairman, but who else here gets ads for the LifeAlert, the Acorn Stairlift, the Kayak Stairlift, the Companion Stairlift, the cowboy who uses the catheter—broke 14 bones, he did!

SEN. BLUMENTHAL: Yes! So it’s not just me! And don’t you all hate getting those ads for Viagra, Cialis, the Boston Medical Group, Spencer Gifts, Lovehoney, Adam and